
Appeal Decision

Site visit made on 21 April 2017

by Matthew Birkinshaw BA(Hons) Msc MRTPI

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

Decision date: 30th May 2017

Appeal Ref: APP/M4320/W/16/3154587

Cafe D'Art, 26B Chapel Lane, Formby, L37 4DU

- 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 Kevin Grimes (Cafe D'Art Ltd) against the decision of Sefton Metropolitan Borough Council.
 - The application Ref DC/2016/00621, dated 31 March 2016, was refused by notice dated 15 July 2016.
 - The application sought planning permission to allow the premises to operate as a bar without complying with a condition attached to planning permission Ref N/2003/1180, dated 8 January 2004.
 - The condition in dispute is No.2 which states that: *"The internal premises shall not open for business outside the hours of 9am to 11.30pm Monday to Sunday."*
 - The reason given for the condition is: *"In the interests of the amenities of the residents of the dwellings hereby permitted and to comply with Sefton UDP Policy ENV.63."*
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appeal form indicates that the appeal has been made against the failure of the local planning authority to give notice of its decision on an application for planning permission. However, immediately prior to submission of the appeal a formal decision notice was issued by the Council. I have therefore determined the appeal on this basis, and against the decision to refuse permission for use of the premises as a bar without complying with condition no.2 attached to planning permission Ref N/2003/1180.
3. Following submission of the appeal the *Sefton Local Plan* has been adopted. As a result, Policies MD6 and EP6 of the *Sefton Unitary Development Plan* have been superseded by Local Plan Policies EQ4 and EQ10. Both parties have been provided with an opportunity to comment on this change, and I have taken the Local Plan policies into account as part of the development plan for the area.

Background and Main Issue

4. In 2004 planning permission was granted to use the appeal premises as a bar (Ref N/2003/1180). Condition no.2. restricts the opening times to 09:00 – 23:30 hours Monday to Sunday. The planning application sought permission to remove the condition and reflect other premises on Chapel Lane.
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5. In response the Council and several local residents have raised concerns that this would lead to increased levels of noise and disturbance late at night. The main issue is therefore:
 - Whether or not condition no.2 is necessary in the interests of the living conditions of neighbouring residents, having particular regard to noise and disturbance.

Reasons

6. The appeal property operates as a café/bar. At the rear is an outdoor seating area which backs onto the Sumner Road public car park. Beyond the car park are the rear gardens of residential properties along Crompton Road.
7. Given that the houses on Crompton Road back onto a public car park and are situated close to a range of commercial properties, including other bars, existing residents are already likely to be subject to some degree of noise and disturbance. However, the application seeks permission to allow unrestricted opening of the bar every day of the week. In response several local residents have identified that on occasions when the bar has opened until the early hours in the past, the noise and disruption from music and patrons outside has led to nuisance and sleep disturbance. Although no formal action has been taken, the Council's Environmental Health Officer has also objected to the proposal, and confirms that complaints have been received about noise breakout from the premises opening beyond its permitted hours.
8. Due to the relationship between the appeal property, the car park and the nearest residential properties on Crompton Road to the south, I agree with the Council that the noise associated with patrons coming and going from the bar until the early hours would be a direct source of nuisance. Whilst measures could be used to restrict patrons from going outside and leaving doors open, the noise from raised voices, people leaving the bar and using the car park would be particularly noticeable during summer months when residents are likely to have windows open for ventilation. Allowing such activities, 7 days a week, would cause significant harm to the standard of living enjoyed by occupiers of properties on Crompton Road adjacent to the car park.
9. At the appeal stage the appellant states that the application for unrestricted opening was only intended to reflect other bars nearby, and that the business would not operate outside of its premises licence. The Environmental Health Officer confirms that the premises licence allows the bar to trade from 08:00 – 02:00 hours.
10. However, I have not been provided with any evidence to suggest what factors were taken into account in granting the licence, or any relevant conditions that the proprietor must adhere to. Furthermore, since approval of the licence in 2004, and its review in 2010, the Council has received complaints. Several written representations also indicate that noise nuisance has occurred outside the premises when opening beyond midnight. As a result, the fact that the Council did not previously object to the hours stipulated in the licence does not mean that the proposal would be acceptable in planning terms. Where neighbouring properties can open for longer the Council also confirms that they benefit from historic planning permissions without the same restrictions. As a result, the circumstances are materially different.

11. The appellant has clearly been proactive in working with the Council and other interested parties to resolve some of the issues raised. A new conservatory roof has been installed and work is ongoing with the Environmental Health Department to explore solutions to further limit noise. This includes the use of self-closing doors. Nevertheless, no acoustic information has been provided to indicate what effects such measures would have, especially during the early hours when shops are closed and the background noise is likely to be quieter. Furthermore, this would not address the issues raised by several local residents concerning the noise nuisance from patrons outside the bar late in the evening. In the absence of any site specific acoustic evidence or surveys I am therefore not persuaded that the effects of the proposal could be adequately mitigated, and it would not be appropriate to rely on the use of planning conditions.
12. In addition to complaints there is notable support for the scheme, including from residents on Crompton Road. It is also recognised that the appellant is active in the local community and is part of the Formby Village Traders Partnership which organises successful local events. Café D'Art also sponsors local musicians and sports groups, encourages local students to perform and exhibit artwork and has won the Council's "Best bar non" award. Should the appeal fail it is suggested that the bar would close, with the loss of 25-30 jobs. But this must be weighed against the significant harm that I have identified, and the concerns raised by the Council and other local residents. Based on the evidence provided the socio-economic benefits of the proposal do not justify allowing the appeal given the harm that would be caused to the living conditions of neighbouring residents as a result of increased noise disturbance.
13. In support of the appeal reference has also been made to the Council's process of determining the planning application and lack of dialogue with the Planning Officer. However, whilst I appreciate the appellant's frustrations in this regard, I am required to consider the proposal on its specific merits and I have determined the appeal on that basis.
14. I therefore conclude that the opening hours proposed would have a significant, unacceptable and harmful effect on the living conditions of neighbouring residents from noise and disturbance generated by customers late at night. As a result, condition no.2 is necessary, and the proposal would conflict with Local Plan Policy EQ10 which permits food and drink uses provided that they do not cause significant harm to local amenity. It would also conflict with Local Plan Policy EQ4 which requires proposals to demonstrate that appropriate measures have been taken to minimise the risks of adverse impacts on amenity, and that the impact of noise would not be significant or can be reduced to acceptable levels. Finally, the proposal is contrary to one of the Core Planning Principles of the National Planning Policy Framework which seeks to secure a good standard of amenity for all existing and future occupants of land and buildings.

Conclusion

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

Matthew Birkinshaw

INSPECTOR