
Appeal Decision

Site visit made on 31 May 2017

by Stephen Hawkins MA MRTPI

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

Decision date: 29th June 2017

Appeal Ref: APP/Z0116/W/17/3170050
85 Queens Road, Clifton, Bristol BS8 1QS

- 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 Marstons Estates against the decision of Bristol City Council.
 - The application Ref 16/03266/F, dated 29 April 2016, was refused by notice dated 26 October 2016.
 - The development proposed is described as *"for the extension of opening hours to 0800-2330 Monday-Thursday; 0800-midnight Fridays-Saturdays and 0800-2300 Sundays and Bank Holidays; external alterations to the shop front to create a new entrance from Queens Road, removal of 4 no plant condensers and replace with 3 no new plant condensers, installation of green wall and enlarged louvre opening"*.
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Decision

1. The appeal is allowed and planning permission is granted for the extension of opening hours to 0800-2330 Mondays-Thursdays; 0800-midnight Fridays-Saturdays and 0800-2300 Sundays and Bank Holidays; external alterations to the shop front to create a new entrance from Queens Road, removal of 4 no plant condensers and replace with 3 no new plant condensers, installation of green wall and enlarged louvre opening at 85 Queens Road, Clifton, Bristol BS8 1QS in accordance with the terms of the application, Ref 16/03266/F, dated 29 April 2016, subject to the conditions in the schedule at the end of this decision.

Application for Costs

2. An application for costs was made by Marstons Estates against Bristol City Council. This application is the subject of a separate Decision.

Main Issue

3. The main issue in this appeal is the effect of the proposal on the living conditions of the occupiers of nearby residential properties, having regard to noise and disturbance.

Background

4. Planning permission was granted by the Council in September 2013 for a use of the appeal site as a restaurant¹. Condition 10 of that permission required that no customers should remain on the premises outside of the hours of 0800 to 2300 hours on Mondays to Saturdays and 0900 to 2230 hours on Sundays and

¹ Council reference 13/02228/F.

Bank Holidays. The reason for the condition was to safeguard the residential amenity of nearby occupiers.

5. A previous proposal by the former operator to extend the restaurant opening hours to 0200 on Saturday and Sunday mornings was dismissed at appeal on 9 February 2015².

Reasons

Living conditions

6. The appeal site consists of a vacant restaurant. It has an expansive floor area, split over ground floor and basement levels and it is situated on the corner of Queens Road and Park Place. Pedestrian access is via a lobby in the Queens Road frontage, although there are openings below Park Place at basement level. The restaurant forms part of a large modern building arranged over four floors. The building contains a mix of uses including a supermarket, another restaurant and a fitness centre.
7. I am given to understand that this part of Queen's Road lies within the West End as identified by the Council's Central Area Plan 2015 and is in the City Centre. There is a mix of commercial uses opposite the restaurant and further to the south-east along Queens Road and its adjoining thoroughfares, such as Triangle West. There are shops, cafes, restaurants, bars and clubs, some of which are open until the early hours of the morning. This gives these streets a vibrant commercial character. I have not seen anything to suggest that this area is not characterised by a strong evening economy with a considerable amount of late night activity.
8. To the north west of the restaurant, there is a change in the above character. In part, this can be attributed to the presence of residential, institutional and office uses along nearby parts of Queens Road and Whiteladies Road. Park Place is largely comprised of terraced dwellings arranged around a communal green. There is a public house in Park Place, known as Quinton House, which faces over the green. The pub is of modest size and whilst I understand that it can be open until midnight, it is unlikely to be comparable in terms of noise from activities and comings and goings to a restaurant with a much larger floorspace.
9. Park Place is therefore largely residential in character compared with Queens Road. Richmond Hill shares similar residential characteristics. Rooms including bedrooms in the residential apartments at Richmond Heights on the corner of Park Place and Queens Road face towards the restaurant. The proximity of residential uses led the previous Inspector to describe the location of the restaurant as being significantly more peripheral to the main commercial area where most of the late opening premises are located. I have not found anything to disagree with that conclusion.
10. The previous Inspector considered that given the proximity of the restaurant to Park Place, extending opening hours to 0200 hours on Saturdays and Sundays would be likely to result in an increase in activity late at night, generating additional noise from customers talking, shouting, and closing car doors at times when the nearby residential occupiers may reasonably expect to experience greater quiet, in particular if many customers were to leave the

² Reference APP/Z/00116/A/14/2226079.

restaurant simultaneously, for instance after a private function. Therefore, he was not persuaded that the proposal would not harm nearby residential occupiers' living conditions on Park Place, and in Richmond Heights. I have given these conclusions significant weight.

11. The current proposal entails a more limited increase in the weekend opening times over the previous scheme, albeit also with extended weekday opening times. The proposal is accompanied by clearer and more extensive evidence regarding the likely noise impacts of the proposed extended opening times. The submitted noise evidence indicates that pedestrians and traffic passing along Queens Road, including buses and taxis, are already sources of significant noise and disturbance in the vicinity of the restaurant, including in Park Place and at Richmond Heights, during the proposed extended opening times.
12. I appreciate that it could be expected that many people might generally be asleep after 2300, especially on weekdays. Nevertheless, on the basis of the submitted noise evidence the nearby residents are likely to already experience a higher degree of noise and disturbance from traffic and pedestrian activities in the vicinity of their properties during the proposed extended opening times, compared with what they might experience later on in the night or in the early morning.
13. The submitted evidence indicates that the noise generated by pedestrian and vehicular comings and goings or gatherings on the pavement outside of the restaurant and any noise from activity within the restaurant itself during the proposed extended opening times would be lower than the existing background noise levels. The Council has not disputed the evidence of the existing and predicted noise levels in the appellant's evidence. I have not been given details of any noise complaints made in respect of the former operator of the restaurant.
14. Whilst it has been suggested by interested parties that the noise evidence was not fully representative due to the dates and limited number of occasions when measurements were carried out, I have not been given any firm evidence to suggest that background noise levels would have been significantly lower on other dates. Similarly, although interested parties have been critical of the accuracy of the appellant's noise assessment, I have not been given any firm evidence to suggest that the methodology used and its conclusions should not be given significant weight.
15. Interested parties have referred to the increased likelihood of smokers from the restaurant using Park Place. This was factor identified by the previous Inspector in reaching his findings. I accept that there could be such occurrences despite the appellant's efforts at discouraging such activity. However, unlike the previous appeal there is no firm evidence to suggest that Park Place would be a significantly quieter environment compared with Queens Road during the proposed extended opening times. The impacts of any noise and disturbance created by restaurant patrons parking on Park Place or from taxi pick-ups also have to be assessed against the existing background noise levels in the vicinity.
16. Interested parties have referred to the restaurant being used for large gatherings such as birthdays and stag and hen parties. I understand that similar events are held at the appellant's Birmingham restaurant. I appreciate

that large numbers of patrons could all leave the restaurant together at the end of the evening on occasions. However, given the background noise levels in the vicinity the effects of this are likely to be significantly less pronounced than they would be further on into the early hours of the morning. Moreover, in the majority of cases restaurant patrons are likely to dine earlier in the evening. Many of those patrons are therefore likely to have left the restaurant before closing time, even if they also had drinks after their meal. In many cases the patrons would be arriving and departing as couples or in small groups. Interested parties have questioned the business case for the extended opening times if this is indeed the likely pattern of custom at the restaurant. However, I have not been given any firm evidence to suggest that the restaurant would not operate in a similar manner to other A3 uses.

17. The submitted noise management plan and supplementary management statement submitted dealing with amongst other matters, dispersal of customers leading up to closing time, arrangements for smokers and for taxis picking up guests, would also ensure that any noise and disturbance caused by activity taking place within and in the vicinity the restaurant is further minimised. The implementation and maintenance of the management plan and management statement could be controlled by a condition. Together with the above factors, it would therefore be unlikely that there would regularly be large numbers of patrons leaving the restaurant together at or immediately before closing time. For similar reasons, there is also unlikely to be queueing outside of the restaurant late at night.
18. The proposal also entails alterations to the front elevation of the restaurant, principally involving a new front entrance and sliding windows. Although adjacent to the corner of Park Place, the proposed new entrance to the restaurant would only open onto Queens Road. The entrance would also be lobbied, with acoustic controls. The entrance would still be a reasonable distance away from the Richmond Heights apartments. There are unlikely to be significant gatherings of patrons outside of the restaurant, for reasons already explained above. I understand interested parties' concern that the proposed entrance would become a focus of activity and the suitability of the existing entrance with modifications for such use. However, any noise from the comings and goings of patrons is likely to be largely dissipated by the background noise of activity on Queens Road. Consequently, nearby residential occupiers are unlikely to experience noticeably higher levels of noise and disturbance compared with the current situation. The sliding windows would also face directly onto Queens Road and noise escaping from with the restaurant would also therefore be likely to be assimilated into the background of noise from activity on the road.
19. I understand there might be other restaurants in the immediate area which have opening times similar to those currently enjoyed by the restaurant. However, that in itself that is not a good reason for concluding that the proposal would be unacceptably harmful to the living conditions of the occupiers of nearby residential properties.
20. I have also considered the effect of the extending the opening times from 0900 to 0800 on Sunday mornings. Pedestrian and vehicle traffic levels are likely to be lower at that time and nearby residents could therefore expect more peace and quiet. However, in my view it is unlikely that substantial numbers of patrons would be arriving and departing the restaurant during that time.

Consequently, the proposed earlier opening time on Sundays is unlikely to result in significant levels of noise and disturbance being experienced by nearby residents.

21. Therefore, and in the absence of any firm evidence to indicate otherwise, I am led to conclude that any noise and disturbance caused by pedestrian and vehicular comings and goings to and from the restaurant during the proposed extended opening hours and activities thereat, whether during the week or at weekends, would not be readily distinguishable from nearby residential properties, as it would largely be assimilated against the background noise of existing pedestrian and vehicular activity in the vicinity.
22. The noise evidence submitted with the appeal concluded that the noise of the new plant proposed would be below the existing background noise levels at Richmond Heights when assessed against BS4142:2014. It also concluded that the existing kitchen extract exceeded the noise levels of the proposed plant and it required attenuation. Such attenuation would reduce the existing noise levels from the restaurant plant. Again, the Council has not disputed the findings of the submitted evidence. In the absence of any evidence to indicate otherwise, this leads to the conclusion that the proposed plant installation would not cause unacceptable harm to the living conditions of occupiers of Richmond Heights.
23. Interested parties have also expressed the view that the restaurant business model would be much more drink orientated than a typical use within Class A3 of the Use Classes Order³. However, the Council accepted that the restaurant would fall within Class A3 and I do not have any firm evidence before me to suggest that I should conclude otherwise.
24. Although 11-13 Queens Road might be in a more central position in the main commercial area, it has a number of residential apartments directly over. Consequently, whilst each case falls to be considered on its individual merits, I have given modest weight to the recent appeal decision concerning that property⁴, in which permission was granted for a restaurant with a condition with the hours of use limited to 0700-2330 Mondays to Sundays.
25. I note that the appellant has obtained a Premises Licence from the Council under the Licensing Act 2003, in which the opening hours of the restaurant would accord with those of the proposal. However, the planning and licensing regimes are separate and deal with different matters. A Premises Licence can be reviewed in the event of allegations of a public nuisance. Therefore, whilst I note the appellant's concern regarding an apparent inconsistency of approach between different parts of the Council, I have given the existence of a licence limited weight.
26. I fully appreciate the concerns of the Council and of interested parties in respect of the proposed opening times. However, in view of all of the above factors, there is no firm evidence before me which would demonstrate that the proposal would lead to the occupiers of nearby residential properties experiencing significant levels of noise and disturbance later into the night and early morning or that the nearby residents would experience unacceptable noise levels from the proposed plant installation. Consequently, the effects of

³ Town and Country Planning (Use Classes) Order 1987 (as amended).

⁴ Ref APP/Z0116/W/15/3141401.

the proposal would be materially different to those identified by the Inspector dealing with the previous appeal.

27. Therefore, the proposal would accord with criterion in Policy BCS21 of the adopted Bristol Core Strategy (CS), as it would safeguard the amenity of existing development. Moreover, for the reasons described above, the proposal would accord with CS Policy BCS23, as it would avoid adversely impacting on environmental amenity, having regard to noise. By not causing harm to residential amenity having regard to the impacts of noise and general disturbance, the proposal would accord with Policy DM10 of the adopted Bristol Local Plan-Site Allocations and Development Management Policies (DMP). Furthermore, the impact on environmental amenity would accord with DMP Policy DM35. Moreover, the proposal would offer a benefit to the local economy by supporting sustainable economic development and would also offer a social benefit in terms of increasing accessible local services, whilst securing a good standard of amenity for all existing and future occupants of buildings. Consequently, the proposal would also be consistent with the National Planning Policy Framework (the Framework).

Other matters

28. The appeal site is within the Clifton and Hotwells Conservation Area (CA). I am satisfied that the small-scale external works and the varied opening hours proposed would not harm the character or appearance of the CA.

Conditions

29. In addition to the standard commencement condition, I have imposed a condition specifying the approved plans in the interests of certainty. I have imposed conditions regarding the submission and implementation of an odour management plan and implementation of specified noise mitigation measures to safeguard the living conditions of occupiers of nearby residential properties, having regard to odour and noise and disturbance. To promote sustainable means of transport, I have imposed a condition requiring the submission and implementation of a scheme of cycle parking.
30. I have imposed a condition requiring implementation of the specified refuse and recycling storage arrangements, in the interests of safeguarding the living conditions of occupiers of nearby residential occupiers, the character and appearance of the CA and highway safety. Whilst the Council states that the proposed arrangements are unsatisfactory, they have not explained why this is the case. It did not form part of the reasons for refusing planning permission. I understand that similar refuse and recycling facilities were used by the previous operator of the restaurant and had not been objected to by the Council. The land concerned is in the control of the appellant.
31. After seeking the views of both main parties, I have imposed a condition specifying the opening times of the restaurant, in order to safeguard the living conditions of occupiers of nearby residential properties, having regard to noise and disturbance. This condition is required as the description of development alone is not sufficient to limit the opening times. For similar reasons, I have also imposed conditions requiring implementation of the submitted noise management plan and the associated management statement, restricting refuse and recycling collection and delivery times and restricting the use of any external areas.

32. Where necessary, I have amended and consolidated the conditions suggested by the Council. In particular, where relevant I have amended the suggested conditions to require compliance prior to commencement of the use. This is because I am not persuaded that the requirements of the relevant conditions are so fundamental to the development that it would otherwise have been necessary to refuse permission. Therefore, it would not be reasonable to impose pre-commencement conditions. Moreover, in relation to condition 4, the appellant could not undertake the required works without breaching the condition, if it had been framed as a pre-commencement condition.
33. The refuse and recycling storage conditions (suggested conditions 5, 6 and 7) have been amended and consolidated, largely for reasons set out at paragraph 30 above. I have also removed the references in conditions to "unless otherwise agreed with the Local Planning Authority" as this creates a degree of uncertainty as to what has actually been permitted which could render such conditions unlawful. Where relevant, I have also removed references to seeking further permission from the Council. Such references are unnecessary as formal applications would be required to vary the relevant conditions in any event. The reference to not storing material on the public highway is unnecessary and unenforceable. Suggested condition 8 has been consolidated with condition 5 below.
34. I have not imposed suggested condition 3. Sufficient details were submitted with the application to enable the effect of the alterations to the front elevation on the character and appearance of the CA to be assessed. Therefore, this condition is unnecessary. Also, I have not imposed suggested condition 9, as it is unnecessary having given the requirements of condition 4 below, which would reduce the overall impact of noise from plant compared with the existing situation.

Conclusion

35. The proposal would accord with the Development Plan and it would be consistent with the Framework. Therefore, I conclude that the appeal should be allowed.

Stephen Hawkins

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 2057/01 Rev A, 2057/02 Rev B, 2057/03 Rev A, 2057/05 Rev A, 2057/06 Rev A, 2057/08 Rev A, 2057/13, 0234-02-01 Rev M, 0234-09-01 Rev B, Standard Fixed Light Details, Standard Track Details 1 of 2, Standard Track Details 2 of 2.
- 3) The use hereby permitted shall not commence until an odour management plan has been submitted to and approved by the Local Planning Authority and implemented in accordance with the approved details. Thereafter, the odour management plan shall be complied with in accordance with the approved details.
- 4) The use hereby permitted shall not commence until the noise mitigation measures detailed on page 22 of the Blue Tree Acoustics Report (Doc Ref: 02957-880103) have been implemented in full. Thereafter, the specified noise mitigation measures shall be maintained.
- 5) The use hereby permitted shall not commence until a scheme for staff cycle parking has been submitted to and approved by the Local Planning Authority and implemented in accordance with the approved details. Thereafter, the approved cycle parking shall be retained and kept available for use in accordance with the approved scheme.
- 6) The use hereby permitted shall not commence until the refuse store and area/facilities allocated for storing of recyclable materials, as detailed in the submitted Operational Waste & Deliveries Management Strategy have been provided. Thereafter, all refuse and recyclable materials associated with the development shall be stored within this dedicated store/area.
- 7) The premises shall only be open for customers between the following hours:
0800 to 2330 Mondays-Thursdays
0800 to 0000 Midnight Fridays and Saturdays
0800 to 2300 Sundays and Bank Holidays.
- 8) The use as a restaurant shall not be operated other than in strict accordance with the submitted noise management plan and the associated management statement.
- 9) Activities relating to the collection of refuse and recyclables and the tipping of empty bottles into external receptacles shall only take place between 0800 and 2000 Monday to Saturday and not at all on Sundays or Bank Holidays.
- 10) Activities relating to deliveries shall only take place between 0800 and 2000 Monday to Saturday and not at all on Sundays or Bank Holidays.
- 11) No external areas shall be used for external seating or as a similar amenity area.