



Appeal Decision

Site visit made on 4 July 2017

by **B Bowker Mplan MRTPI**

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

Decision date: 27 July 2017

Appeal Ref: APP/Z4310/W/17/3174375

33 Bold Street, Liverpool L1 4DN

- 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 Ergin Maybarskan against the decision of Liverpool City Council.
 - The application Ref 15F/3055, dated 20 November 2015, was approved on 17 January 2017 and planning permission was granted subject to conditions.
 - The development permitted is change of use from retail store to licensed restaurant.
 - The condition in dispute is No 4 which states that:
The premises shall not be open for business outside the hours of 0700 and 2400.
 - The reason given for the condition 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.

Background and Main Issue

2. The appellant wishes to extend the opening hours from those originally imposed to between 0700 and 0200 hours on Mondays to Sundays (throughout the entire seven day week).
3. The main issue is whether the condition is necessary and reasonable, having regard to the living conditions of neighbouring residents in terms of noise and disturbance.

Reasons

4. The appeal site comprises a restaurant surrounded by a mixture of similar uses and shops. The section of Bold Street running across the frontage of the appeal premises is pedestrianised. Concert Square is to the south west of the site and is surrounded by bars and nightclubs.
5. During my site visit I observed that a number of restaurants along Bold Street do not advertise their opening hours. The closing times I observed in the vicinity of the site varied from 11pm to 6am for Subway to the south east. This aside, I have no reason to doubt the Council's records that the adjacent restaurant closes at 2330 and that other cited nearby restaurants do not open beyond 2400.
6. I observed that the upper floors directly opposite the appeal site were in residential use. In addition, the Council's planning history records indicate that

a number of upper floors of properties along Bold Street have been converted into residential use. In this respect, I have concerns that the proposal would generate noise and disturbances close to residential neighbours by virtue of comings and goings at an anti-social time of day. The Council also refer to an appeal¹ at No 62 Bold Street relating to a café and hot food takeaway with upper floor residential use.

7. As a compromise between the opening hours proposed, the Inspector determining the appeal at No 62 imposed a condition to ensure that the premises were not open outside midnight on any day. Therefore the hours imposed by the Council are consistent with a nearby appeal decision. Furthermore, whilst each case is dealt with on its own merits, I agree with the Council that allowing this appeal could set an unwanted and harmful precedent in relation to other restaurants that are close to residential use along Bold Street.
8. The appellant states that residential properties in this city centre location comprise student accommodation. However, this is not sufficient justification to allow the opening hours sought in the vicinity of residential properties. I also acknowledge that Concert Square has bars and night clubs open until 0600. However, Concert Square is enclosed and set away from Bold Street involving a number of similar uses concentrated in one area. Consequently noise and disturbance would be focussed away from Bold Street.
9. It is put to me that a number of restaurants in the vicinity operate beyond 2400 and that the Council via its Ropewalks Supplementary Planning Guidance (SPG) document impose a standard restaurant closing hour of 0200. An email from the Council stating that there is a blanket rule to this effect is also referenced. Consequently it is contended that the Council have been inconsistent in imposing a closing hour of 2400.
10. However, the SPG outlines that owing to the potential for conflict between residential and late night uses, proposals have to be considered sensitively through balancing their merits against the potential impact on amenity for both existing and future residential occupiers. The proposed opening hours would contribute to the night time economy. However, this modest benefit would be outweighed by the harm to the living conditions of neighbouring occupants identified above.
11. Taking the above into account and the closing times of nearby restaurants, I cannot agree that the Council have been inconsistent in how they determined the proposal.
12. It is also contended that the Council do not have a definitive policy limiting the hours of operation in the area. However, saved Policy HD18 of the Liverpool Unitary Development Plan (UDP) seeks to ensure that development does not result in a severe loss of amenity for adjacent residents. On this basis the Council have justifiable grounds to resist the opening hours sought.
13. In reaching this view I have considered the appellant's suggested conditions which relate to waste, bottles and ensuring that all windows and doors (with the exception of the entrance and exit) are closed at 2300. In addition, a notice is proposed to request that patrons respect neighbours and leave the

¹ APP/Z4310/A/13/2208377

premises quietly. However, these suggested measures would not guarantee that neighbouring living conditions would be preserved.

14. Therefore I conclude that the condition is necessary and reasonable, having regard to the living conditions of neighbouring residents in terms of noise and disturbance. To allow the opening hours proposed would conflict with saved UDP Policy HD18 and paragraph 17 bullet point 4 of the National Planning Policy Framework. Combined and insofar as they relate to this matter both policies seek to ensure that there is no severe loss of amenity to adjacent residents and that development ensures a good standard of amenity for all existing occupants.

Conclusion

15. For the reasons given above, and having taken all matters raised into account, I conclude the appeal should be dismissed.

B Bowker

INSPECTOR