
Appeal Decision

Site visit made on 27 November 2017

by K Ford BSocSc (Hons) MSc MRTPI

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

Decision date: 12th January 2018

Appeal Ref: APP/G4620/W/17/3181434

643 Bearwood Road, Bearwood, West Midlands B66 4BL

- 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 Miss Donna Johnson against the decision of Sandwell Metropolitan Borough Council.
 - The application Ref DC/17/60669, dated 25 April 2017, was approved on 11 July 2017 and planning permission was granted subject to conditions.
 - The development permitted is change of use of ground floor to wine bar.
 - The condition in dispute is No 3 which states that: the use hereby permitted shall only be open to the public Sunday to Thursday 12:00 hours to 23:00 (and vacated by 23:30 hours) and Friday and Saturdays 12:00 hours to 00:00 (and vacated by 00:30 hours).
 - The reason given for the condition is: to safeguard nearby residents from any undue noise and general disturbances.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. On the appeal form the appellant identified the reason for the appeal as being '*granted approval of matters reserved under an outline planning permission subject to conditions to which you object*'. From the appeal statement it appears that the actual grounds of the appeal relate to '*granted planning permission of the development subject to conditions to which you object*' and so I have dealt with the appeal on this basis.

Background and Main Issue

3. Planning permission has been granted to change the use of the ground floor of 643 Bearwood Road to a wine bar. The appellant originally applied for opening hours from midday to 0500 every day, and in the statement to the appeal indicated a wish for opening into the early hours of the morning, between 0300 and 0400 on the weekend. The main issue is consequently the effect that varying the opening times would have on the living conditions of neighbouring residents with particular regard to noise and disturbance.

Reasons

4. The appeal site is located on the corner of Bearwood Road and Poplar Road. Uses in the vicinity of the site on Bearwood Road are predominantly commercial, however, there is a greater mix of both commercial and residential

uses on Poplar Road. Although there is no residential use above the premises, the Council identify that the nearest dwelling is some 16 metres from the appeal site and I noted on my site visit that the nearest residential property is indeed close to the premises.

5. The appellant suggests that the music played in the development would not be as loud as that in a nightclub and it is accepted that there are other means in which to deal with noise nuisances. Nevertheless, the activity associated with the functioning of the wine bar would generate a level of disturbance that would be difficult to control. This includes the comings and goings of patrons, people talking, shouting, those congregating outside the premises to smoke and the potential for drunken behaviour given that the permitted use of the site involves the sale of alcohol. There may be a car park nearby but those visiting or leaving the site via taxi would generate disturbances associated with car doors opening and closing and the engine running noises of waiting taxis.
6. Given the location of the premises, a certain level of noise above that found in a wholly residential area can be expected by those residing in the vicinity. However, it is not unreasonable to expect that noise levels should subside late at night and not continue into the early hours of the morning. The extended opening hours proposed would therefore be excessive in the context of the site's surroundings.
7. The disputed condition is reasonable and necessary in the interests of protecting the living conditions of the neighbouring occupants of Polar Road with particular regard to noise and disturbance. The condition is relevant to planning and the development. It is sufficiently precise, enforceable and reasonable in all other respects. The condition is therefore required in accordance with the part of Policy SAD DM 6 of the Site Allocations and Delivery Development Plan Document which identifies that conditions will be used where noise from proposed activities is likely to affect neighbouring properties. The disputed condition also accords with paragraph 206 of the National Planning Policy Framework and with guidance contained in Government's Planning Practice Guidance.

Other Matters

8. I acknowledge the appellant is suggesting that for business viability purposes opening later would be an advantage. However, such matters are not generally material planning considerations to which I can afford any significant weight. The appellant has also referred to other businesses that operate extended hours. I do not know the circumstances in which the approvals were granted and the information provided is too limited to enable a meaningful comparison with the case before me. In any event each case is determined on its own merits and my assessment is based on the information before me.

Conclusion

9. For the reasons identified, the appeal is dismissed.

K Ford

INSPECTOR