The Planning Inspectorate

Appeal Decision

Site visit made on 16 January 2018

by Katie McDonald MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 March 2018

Appeal Ref: APP/M2325/W/17/3187493
Barrique, 2 & 3 Market Hall, Market Square, Lytham FY8 5LW

- 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 Charles Furnell (Lytham Wine Company Limited) against the decision of Fylde Borough Council.
- The application Ref 17/0534, undated application, was refused by notice dated 6 September 2017.
- The application sought planning permission for change of use of existing retail unit to mixed use as bar (class a4) / retail unit (class a1). Replacement of windows to front with doors and replacement window to side without complying with a conditions attached to planning permission Ref 16/0074, dated 29 June 2016.
- The conditions in dispute is No 3 which states that:
  That the external fore court area to the front of the premises shall only be used for the consumption of food and drink between the hours of 9am and 9pm on any day, with the internal area only open for customers between the hours of 8am and 11pm on any day.
- The reason given for the condition is:
  In the interests of preserving the amenity of occupiers of neighbouring and nearby residential properties as required by Policy EP27 of the Fylde Borough Local Plan.

This decision is issued in accordance with Section 56(2) of the Planning and Compulsory Purchase Act 2004 (as amended) and supersedes the decision issued on 13 February 2018

Decision

1. The appeal is allowed and planning permission is granted for change of use of existing retail unit to mixed use as bar (class a4) / retail unit (class a1) at Barrique, 2 & 3 Market Hall, Market Square, Lytham FY8 5LW in accordance with the application Ref 17/0534, undated, without compliance with condition number 3 previously imposed on planning permission Ref 16/0074 dated 29 June 2016 and subject to the following conditions set out in the attached schedule.

Procedural Matter

2. Policy GD7 of the Fylde Council Local Plan to 2032 (submission version) is referred to in the reason for refusal. Policy EC5 of the same draft plan is also referred to in the Council's statement. The purpose of a Local Plan examination is for the Examiner to consider whether the plan is 'sound'. Accordingly, it is possible that a policy could be amended or deleted as a result of the examination or that the plan is withdrawn or found unsound. However, I note that the examinations have concluded and the Council expect to adopt their

new local plan in Spring 2018. Therefore, having regard to paragraph 216 of the National Planning Policy Framework (the Framework); I will give these draft policies some weight in my assessment.

Background and Main Issue

3. Planning permission to change the use of the appeal site to a mixed use as a bar and retail unit included a condition to restrict opening hours, both internally and externally. The Council's statement indicates that the part of the condition that controls the hours of use for the external forecourt is necessary to ensure the development would not harm living conditions at surrounding residential properties. The proposed hours of opening in relation to the internal use of the building are considered acceptable by the Council, and I have no reasons to disagree.

4. As a result, I consider the main issue is the effect of the proposed hours of use of the external forecourt on the living conditions of nearby residents, with particular reference to noise and disturbance.

Reasons

5. The site is located in the town centre of Lytham, fronting onto the War Memorial gardens and being sited within part of the former Market Hall, a Grade II Listed Building. It is also set within the Lytham Conservation Area.

6. The Market Hall contains other commercial businesses including a bank and clothes shop; closely linked to other shops, bars and services on Hastings Place and Market Square. The County Hotel public house is situated behind the building, with another bar, Zest, located to the east on Hastings Place. The area has a predominantly commercial character with residential dwellings sited to the north of Hastings Place. The residential dwellings are two storey, set back from the road by small front gardens and curve around the corner. Between the site and the residential dwellings is a two way road with parking bays and footpaths to either side.

7. The site features a modestly sized front forecourt area for outside eating and drinking. It is covered by two large umbrellas and featured heaters over 8 small tables, each seating around 3-4 people. Given the boundary treatments, the forecourt area was well defined and separated from the memorial gardens.

8. The current condition permits use of the outside seating area until 2100 and the proposal is to increase this by one hour to 2200. There are various bars, restaurants and public houses near to the site and night time activity in the area is not uncommon. Indeed, as the internal area of the appeal site is permitted to open until 2300, it would be reasonable to expect general comings and goings of customers beyond both the authorised and proposed time of use of the outside seating area. Furthermore, the width of the road somewhat ameliorates the effect due to the separation between the dwellings and the appeal site. Given these factors, I consider that the additional hour of outside customer activity between 2100 and 2200 would not make a significant difference to the noise and activity already experienced in the area.

9. Consequently, on balance, I am not persuaded that the proposal would lead to any adverse harm to neighbouring living conditions of residents on Hastings Place. I find compliance with Policy EP27 of the Fylde Borough Local Plan as Altered (October 2005) (LP), which seeks to minimise or prevent noise

pollution. Whilst not quoted in the reason for refusal, I have also had regard to Policies SH8, EP3 and SH16 of the LP. I also find that there would be compliance with these policies which seek to control uses within secondary shopping frontages, to conserve or enhance the character or appearance of the area, and protect the amenities of nearby residents, taking into account the characteristics of the area concerned.

10. I also find that the proposal would be in accordance with draft Policies GD7 and EC5 of the Fylde Council Local Plan to 2032 (submission version) of which I accord some weight. These policies seek to ensure that uses involving operational hours in the evening or night should not create unacceptable disturbance to residents.

11. I have considered the Framework and also find compliance, mainly paragraphs 122 and 123 which advises that decisions should aim to mitigate and reduce to a minimum other adverse impacts on health and quality of life arising from noise from new development, including through the use of conditions.

Other matters

12. Whilst I sympathise with local residents that the proposed hours of use may have been in operation for some time, it is not a matter before me and I have considered the proposal on its merits.

13. There are no physical changes taking place to the building proposed by this appeal and as such there would be little effect upon the character and appearance of the Conservation Area and the Listed Building.

Conditions

14. In terms of conditions, the guidance in the Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should repeat the relevant conditions from the original planning permission, unless they have already been discharged.

15. In view of the Council's submission, I have imposed conditions that are considered to be relevant, taking account of those already discharged. As a result, condition 1 of 16/0074 has been deleted as the development is complete and condition 4 of 16/0074 has been amended to reflect the refuse management details already approved.

Conclusion

16. For the reasons above, I conclude that the appeal should be allowed and the condition varied as proposed.

Katie McDonald

INSPECTOR

Schedule of Conditions

1) The external forecourt area to the front of the premises shall only be used for the consumption of food and drink between the hours of 0900 and 2200 on any day, with the internal area only open for customers between the hours of 0800 and 2300 Sunday to Thursday and between the hours of 0800 and 0000 Friday and Saturday.

2) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, or any equivalent Order following the revocation and re-enactment thereof (with or without modification), the building shall be used for mixed Class A1 (retail) and Class A4 (drinking establishment) purposes (as defined in the Town and Country Planning (Use Classes) Order 1987 (as amended) only, and for no other purpose including solely as either of the two approved uses.

3) That the ground floor doors and any opening windows shall remain closed between the hours of 2100 hours and 0700 hours on every day of the week, except when in use to enter/exit the building.

4) That the scheme of refuse management approved under condition 5 of planning permission 16/0074 which includes details of the siting, size, design and materials of the refuse storage area for the premises shall be maintained and operated in full accordance with the approved scheme at all times thereafter.