



Appeal Decision

Site visit made on 30 July 2019

by Sarah Manchester BSc MSc PhD MEnvSc

an Inspector appointed by the Secretary of State

Decision date: 17th October 2019

Appeal Ref: APP/M4320/W/19/3229527
126-128 South Road, Waterloo L22 0ND

- 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 Mr T Riley against the decision of Sefton Metropolitan Borough Council.
 - The application Ref DC/2019/00445, dated 06 March 2019, was refused by notice dated 25 April 2019.
 - The development proposed is change of use of the ground floor only from a betting shop (Sui Generis) to an (A4) bar and (A3) restaurant.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr T Riley against Sefton Metropolitan Borough Council. This application is the subject of a separate Decision.

Procedural Matter

3. The proposal is described in the application form as "Change of use from betting shop to licenced bar". However, the proposal is a bar and a restaurant and I have therefore adopted the description of the development from the decision notice and the appeal form in the interests of clarity.

Main Issues

4. The main issues are:
 - i) Whether or not the proposed development would undermine the overall retail function of the Waterloo District Centre; and
 - ii) The effects of the proposed development on the living conditions of the occupiers of neighbouring residential properties, with particular regard to noise and disturbance.

Reasons

Effects on the Waterloo District Centre

5. 126-128 South Road is a 3 storey terraced building comprising double-fronted ground floor commercial premises with residential flats above. South Road is a Primary Shopping Area in the Waterloo District Centre, with a mix of

- commercial town centre uses including leisure premises, shops and food and drink establishments including take-aways, restaurants and bars.
6. Policy ED2 of A Local Plan for Sefton Adopted April 2017 (the Local Plan) sets out the Council's approach to town centre uses. As part of this strategy, proposals for compatible non-retail uses will be permitted within the Primary Shopping Areas provided the overall retail function of the Centre would not be undermined, that it makes a positive contribution to the vitality and viability of the Centre, and that it would not result in an unacceptable cluster of non-retail uses.
 7. The ground floor appeal premises are currently vacant. Bringing them back into a suitable town centre use would contribute to the vitality and viability of the Centre.
 8. The premises have not been in retail use since 2006, when a change of use was permitted¹ to class A2 which, at that time, included betting offices. The appeal proposal would not therefore result in the loss of an existing retail unit. However, Policy ED2 of the Local Plan expects 70% of units within Primary Retail Frontages to be in retail use. Although no figure for the proportion of premises in retail use has been provided, the evidence indicates that the area is already unbalanced in favour of non-retail uses. Therefore, and irrespective of the existing lawful use of the premises, it does not follow that an alternate non-retail use would automatically be considered compatible with the current development plan aims for the District Centre.
 9. Moreover, notwithstanding that the proportion of retail to non-retail units would remain the same, the proposal would nevertheless increase the proportion of bars and restaurants in the District Centre. The evidence before me indicates that food and drink establishments are already well-represented in the area. Therefore, even were I to accept that the proposal would not contribute to an unacceptable proportion of generic non-retail uses in the Primary Retail Frontage, it has not been demonstrated that it would not contribute to an unacceptable cluster of non-retail, and specifically food and drink, uses.
 10. I acknowledge that the proposal would not have a direct impact on the use of surrounding premises. However, an over-concentration of any particular use, be it retail or non-retail, would be at the expense of the range of services and facilities necessary to support the vitality and viability of the Centre. Over time, the cumulative effect of an imbalance in the range of uses would be likely to affect the character of the area and its function. The proposal could therefore contribute to indirect effects on surrounding uses and the overall retail function of the Centre.
 11. Therefore, the proposed non-retail bar and restaurant would not be compatible with the town centre location, by virtue of its contribution to an unacceptable cluster of non-retail uses in the Primary Retail Frontage and consequent detrimental effects on the overall retail function of the District Centre. It would conflict with the town centre aims of Policy ED2 of the Local Plan.
 12. While the Council's reason for refusal specifically refers to the proposed A4 use, the A3 restaurant and A4 bar are not functionally severable from one another

¹ Council Ref S/2006/0150

and I therefore consider that the reason for refusal relate to the appeal scheme as a whole.

Living conditions

13. In addition to residential flats above commercial premises in the District Centre, there are several residential side streets leading off South Road including Willoughby Road which is nearly directly opposite the appeal premises.
14. While the application form did not specify the hours of opening, operating hours could be controlled by planning condition. In this respect, the parties agree that the hours of operation could be restricted to 09:00 to 23:00 from Sunday to Thursday and 09:00 to 23:30 on Fridays and Saturdays. There is little information about the scale of the proposals. However, submitted plans suggest that the premises would have the capacity to seat a large number of people with additional standing room in the bar area.
15. On this basis, the proposal has the potential to result in a significantly large number of people coming and going from the premises at all times except for the overnight period. In this respect, it is not disputed that the proposals would result in additional noise and disturbance close to residential properties.
16. While a vibrant Primary Shopping Area would be a busy and noisy place, the noise and disturbance associated with retail premises would tend to be greatest during normal retail hours. The extended opening hours and the nature of the proposed use would result in effects stretching into the late evenings, a time of day that residents might reasonably expect to be a little quieter even in a designated shopping area. There is evidence before me to demonstrate that residential occupiers in this area are already subject to significant noise, disturbance and anti-social behaviour associated with existing non-retail premises in the area. Consequently, the proposal would contribute to cumulative effects which would be detrimental to nearby residential occupiers.
17. I have considered whether the harmful effects of the proposal could be mitigated through planning conditions, including the proposed restriction on hours of opening, a restriction on live and amplified music and live entertainment, and a scheme of sound insulation. I accept that these measures would mitigate adverse noise effects experienced by the occupiers of nearby residential properties, including the flats above the premises. However, they would have no effect on the significant noise and disturbance resulting from the comings and goings of large numbers of people all day and particularly late into the evenings.
18. An earlier application (ref S/2006/1026) for a change of use of the first and second floors to a wine bar was refused on the grounds that the increased comings and goings would result in significant harm to the residential amenities of nearby occupiers, with reference to noise, disturbance and disorder. I acknowledge that that application was considered in a different policy context, and the particular policy listed in the reason for refusal has been superseded. However, there are policies in the development plan that similarly relate to the protection of residential amenity. Moreover, there is nothing before me to suggest that the appeal scheme would not similarly result in detrimental effects on nearby residents as a result of noise and disturbance.

19. Therefore, the proposal would result in significant harm to the living conditions of the occupiers of nearby residential properties, with particular reference to the increase in noise and disturbance associated with comings and goings in and around the premises. The proposal would conflict with the development plan, including Policy EQ4(2c) of the Local Plan which requires development to demonstrate that the impact of noise will not be significant or that it can be reduced to an acceptable level.

Other Matters

20. The appellant has indicated that there is a prospective tenant ready to take possession of the vacant appeal premises. While it is clearly desirable for all units to be in suitable town centre uses, the fact that there is a potential tenant for a bar and restaurant is not a benefit that weighs in favour of a scheme that would conflict with the development plan. Moreover, while the appeal premises have been vacant for over 2 years, there is little before me to demonstrate that other compatible town centre uses, including retail, have been explored and have been found to be not viable at this site.
21. The appeal scheme would create employment for up to 10 full and part-time employees. While this would be a benefit of the scheme, it would not outweigh the significant harm that I have found. Furthermore, there is little evidence to suggest that an alternate town centre use of the premises would not deliver substantially the same benefits without the conflict with the development plan.
22. Although I am not persuaded that the appeal premises would be brought back into use as a betting shop, I accept that this would be a possibility. However, while it would still represent a non-retail use, the operation of a betting shop would nevertheless result in significantly different and lesser impacts from those arising from the appeal scheme. The fallback position of the existing use is not therefore a justification for the scheme before me.

Conclusion

23. For the reasons set out above, the appeal should be dismissed.

Sarah Manchester

INSPECTOR