



Appeal Decision

Site visit made on 15 October 2019

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 November 2019

Appeal Ref: APP/H0724/C/19/3219886

Amigo's Fun Bar, 1-3 Victoria Road, Hartlepool TS24 7SE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Andrew Grylls, Amigo's Bar Ltd, against an enforcement notice issued by Hartlepool Borough Council.
- The enforcement notice was issued on 4 December 2018.
- The breach of planning control as alleged in the notice is Without planning permission, the change of use from a restaurant / fast food outlet to a drinking establishment, and the application of timber panels to the shopfront.
- The requirements of the notice are (i) The premises shall be closed to the public and for any deliveries between the hours of 2330hrs and 0700hrs; (ii) Remove the timber panels and any associated fixings from the shopfront, and restore the shopfront to its previous condition before the breach took place.
- The period for compliance with the requirements is Step (i) above within 2 weeks from the date this notice takes effect; Step (ii) above within 2 months from the date this notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal succeeds in part and permission for that part is granted (however see relevant condition), but otherwise the appeal fails, and the enforcement notice is upheld as set out below in the Formal Decision.

Preliminary Matters

1. In this case the enforcement notice is not seeking the unauthorised use to cease altogether, rather the lesser requirement that the time it is open to the public and for deliveries should be restricted. However requirement (i) of the notice is set out as an ongoing condition and because open-ended requirements are not generally appropriate in the context of an enforcement notice, in the event that I am minded to uphold the notice in relation to the use, the correct approach would be for me to grant planning permission for the use subject to a similarly restrictive condition.
2. The appeal is lodged on grounds (a) and (f). Section 173(3) of the Act says an enforcement notice shall specify the steps in order to achieve wholly or partly, any of the purposes set out in Section 173(4). These include, remedying any injury to amenity which has been caused by the breach.
3. The scheme advanced by the appellant, as an alternative 'lesser step' to allowing the restricted use of the site, would be to introduce less restrictive operating hours in comparison to those proposed by the Council, such that the

premises shall be closed to the public and for any deliveries between the hours of 0300hrs and 0700hrs.

4. Accordingly, in order to consider this alternative I need to deal with it under ground (a) and consider whether this outcome could be achieved by granting planning permission "in relation to the whole or any part" of the matters alleged in the notice in accordance with Section 177(1)(a) of the Act.

The appeal on ground (a)

Reasons

Main Issues

5. Because the Council is not opposing the principle of the alleged land use in this location the main issues are i) whether the Council's proposed operating times would be appropriate, having particular regard to the living conditions of nearby residents and ii) the effect of the timber panels on the character and appearance of the area.

Living Conditions

6. The appeal site comprises a ground floor unit, located within a three-storey terraced building. The site is situated within the town centre, as defined in the Hartlepool Local Plan 2018 (LP). Policy RC2 of the LP states, amongst other things, that unless located within the 'late night uses area', businesses will not be permitted to operate between 11.30pm and 7.00am. The supporting text to this policy explains that drinking establishments and hot food takeaways can if allowed to proliferate, alter the character and function of the town centre, indicating that such uses can be associated with crime and anti-social behaviour, potentially leading to disturbance in surrounding residential areas. The policy therefore seeks to strictly control late night uses.
7. There is no dispute that the appeal site lies outside the designated 'late night uses area'. However the appellant has cited that the appeal site is adjacent to this area and that there are several businesses, constituting late night uses in the vicinity. These businesses include a hot food takeaway next door and bars on the opposite side of Victoria Road. It is undisputed that they are permitted to operate until various times in the early morning, up until 4.00am. The Council suggests, undisputed by the appellant, that this is because of historical use rights associated with the sites in question.
8. From the information provided, the boundary of the 'late night uses area', as defined by Policy RC17 of the LP, is some way to the east of the appeal site, on the north site of Victoria Road beyond the Civic Centre building. It seems to me that although there are similar businesses operating in the locality with more flexible opening hours, using this as a reason to justify similar less regulated development would nevertheless be at odds with the objectives of Policy RC2, which seeks to resist the potential harmful cumulative effects of such developments on surrounding residents. I do not therefore consider that this justifies the proposal.
9. I have taken into consideration that the business would contribute to the local economy; that the site was historically a drinking establishment; the appellant's representation that restrictive opening hours may force the business to close and there is no compelling evidence that it is causing harm;

that economic development is supported by the National Planning Policy Framework (the Framework) and that Policy LS1 of the LP seeks to protect the vitality and viability of the town centre.

10. Whilst I sympathise with the appellant's concerns, it was his choice to locate the business in this location and there is no evidence before me to suggest that it would be unable to continue if the operating hours were restricted in accordance with the Council's requirement. Furthermore, whilst supporting economic development, it is not the intention of national and local planning policy to allow businesses to operate without restrictions at times of night which may put at risk the peaceful enjoyment of people's homes. Even if the opening hours of the business were to be restricted as suggested by the appellant, I am not therefore persuaded that these are sufficiently compelling reasons to set aside the policy presumption against late night uses in this specific location.
11. I conclude that the Council's proposed operating times as set out in the notice would be appropriate, having particular regard to the living conditions of nearby residents. Accordingly the unrestricted operation of the development or its restricted operation in line with the hours suggested by the appellant would be in conflict with Policy RC2 of the LP insofar as it seeks to protect the living conditions of residents and with the Framework insofar as it seeks to create places that are safe, inclusive and accessible, avoiding crime or the fear of crime.
12. The appellant has referred to a licence granted by the Council permitting the premises to open until 4.30am. This however is a separate regime of control and does not have a bearing on my deliberations in this case.
13. Reference has also been made to the previous use of the site being a hot-food takeaway with unrestricted opening hours. However because there is no evidence before me to indicate that this use would have been lawful, I am not persuaded that the prospect of its resumption amounts to a compelling fallback position that would support a similarly unregulated development in this case.
14. In terms of the time required to secure compliance with the Council's opening hours condition, the appellant requests 12 months with a view to winding the business down and the staffing implications of this. I accept that the business may need to modify the way it operates and that, as such, the 2 weeks allowed for by the Council would be unreasonably restrictive. However, on the other hand, the lengthy period requested would run the risk of undermining confidence in the planning system, and it seems to me that a period of 2 months would allow sufficient time for the business to begin operating in accordance with the restrictions of the planning condition.

Character and Appearance

15. The surrounding area is characterised by a variety of building designs, ages and materials. The frontage of the terrace, in which the appeal site is located, features significant glazing, particularly at ground floor level, with regimented window alignments at upper floor levels.
16. The timber panelling comprises vertical boards to a height which serves to obscure the lower portion of the front elevation windows. The panelling is not a characteristic found in the immediate area. Though flush with the front

elevation, and despite the variety of building designs in the wider area, I am in no doubt that it stands out as an incongruous addition, against the substantially glazed frontage of the other units in the terrace and the building as a whole. Furthermore, the panelling serves to 'board up' a significant part of the fenestration which creates a sense of dead frontage, detrimental to the relationship between the unit and adjacent street.

17. I conclude that the timber panelling results in harm to the character and appearance of the area. Accordingly it is in conflict with Policy QP4 of the LP; the Council's Shop Front and Commercial Frontages Design Guide Supplementary Planning Document 2014 and with the Framework insofar as they seek to secure high quality design that respects the character of surrounding buildings and the wider street scene. Whilst I acknowledge that the Framework says that sites should be allowed to develop and modernise, this should not be at the expense of poor design.
18. The appellant has suggested that the boarding would help protect the glazed frontage from breakage, and therefore the health and safety of clientele within the premises. However the building is separated from the carriageway by a wide expanse of pedestrian footway. It therefore seems to me that the risk of a collision occurring with the front of the property, or the shattering of glass for any other reason, would be relatively low and would not outweigh the harm I have identified above.

The appeal on ground (f)

19. The ground of appeal is that the steps required by the notice to be taken exceed what is necessary to achieve the purpose. Specifically the appellant seeks less restrictive opening hours. As I have dealt with this matter under ground (a) there is no need for me to consider this ground further.

The appeal on ground (g)

20. The appeal is that the time given to comply with the requirements is too short. I have dealt with the time allowed to begin complying with the restrictive condition on the operation of the premises under the ground (a) appeal above.
21. The appellant has not set out why a longer period is required to remove the timber panels. I am not persuaded that it would be necessary to allow more than the two months given by the Council for compliance with this requirement.

Conclusion

22. Drawing the above considerations together, I conclude that planning permission should be granted for the use of the premises subject to a planning condition restricting the opening and delivery hours. However the appeal should be dismissed in relation to the application of timber panels to the shop front.

Formal Decision

23. The appeal is allowed insofar as it relates to the land shown outlined in red on the plan annexed to the notice and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the change of use from a restaurant / fast food outlet to a drinking establishment at Amigo's Fun Bar, 1-3 Victoria Road, Hartlepool TS24 7SE subject to the following condition:
- 1) No later than two months from the date of this permission the development shall thereafter continue to be operated in accordance with the following requirement: - The premises shall be closed to the public and for any deliveries between the hours of 23.30hrs and 07.00hrs.
24. The appeal is dismissed and the enforcement notice is upheld insofar as it relates to the land shown outlined in red on the plan annexed to the notice and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended, in respect of the application of timber panels to the shopfront at Amigo's Fun Bar, 1-3 Victoria Road, Hartlepool TS24 7SE.

Roy Merrett

INSPECTOR