



Appeal Decision

Site visit made on 12 June 2019

by D Child BA BPL MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 December 2019

Appeal Ref: APP/A0665/W/18/3217548

315-319 Chester Road, Little Sutton, Ellesmere Port CH66 3RF

- 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 Karl Procter of Alfie's Wine Bars Ltd against the decision of Cheshire West & Chester Council.
 - The application Ref 18/01284/S73, dated 03 April 2018, was refused by notice dated 30 May 2018.
 - The application sought planning permission for change of use of commercial premises from A1 to A3/A4 without complying with a condition attached to planning permission Ref 13/04267/COU, dated 9 December 2013.
 - The condition in dispute is No 3 which states that: The use hereby approved shall not operate except between the hours of 10:00 to 23:00 hours Monday to Sunday.
 - The reason given for the condition is: In the interests of residential amenity in accordance with Policies GEN1, GEN4 and SHOP5 of the Ellesmere Port and Neston Borough Local Plan.
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Decision

1. The appeal is dismissed.

Preliminary Matters and Main Issue

2. Planning permission was originally granted by the Council on 9 December 2013 for the change of use of the building from an A1 retail unit to a mixed use falling within classes A3/A4 of the Use Classes Order¹. The planning permission² was subject to a condition restricting the opening hours as set out in the heading above. The reason given for the condition was 'in the interests of residential amenity'.
3. The condition was imposed under policies of the Ellesmere Port and Neston Borough Local Plan 2002, which were superseded following adoption of the Cheshire West and Chester Council Local Plan (the Local Plan) (Part One) Strategic Policies in 2015. During the Course of the appeal the Local Plan (Part Two) Land Allocations and Detailed Policies were adopted. I therefore wrote to the main parties seeking comment. I shall proceed to consider the appeal having regard to the responses received, and the National Planning Policy Framework 2019 (the Framework).

¹ The Town and Country Planning (Use Classes) Order 1987 (as amended).

² LPA Reference 13/04267/COU

4. The application which is the subject of this appeal³ sought to vary the condition to increase the opening hours, so as to more closely align with those under the appellant's Premises Licence. The hours of use proposed on the application are: Monday to Sunday 09:00 to 00:30; the Thursday leading to Good Friday 09:00 to 01:30; all Bank Holidays 09:00 to 01:30; and from the end of New Years Eve until the close of business on New Year's Day.
5. The application was refused due to the concern of the Council that the proposal would give rise to significant adverse impacts on the health and quality of life of neighbouring residents, by reason of noise and disturbance. Against that background, the main issue is therefore whether the condition restricting opening hours is necessary and reasonable, having regard to the effect on the living conditions of neighbours, with particular reference to noise and general disturbance.

Reasons

6. The site is located on Chester Road, in Little Sutton, between two busy road junctions. The wider area around the site is mixed-use in character. However, the area on the opposite side of the street is primarily residential. Due to commercial uses in the area daytime activity is significant. Chester Road provides links with Ellesmere Port and the motorway network, and between Chester and Liverpool. From the appellant's submitted traffic data, daytime traffic volumes are high. Moreover, because of the night time economy and travel between the neighbouring cities, traffic will not entirely cease after the appeal premises currently closes. Nevertheless, the level and frequency of traffic is likely to tail off substantially during the late evenings and into the early mornings. The traffic data provided by the appellant does not indicate otherwise.
7. Buses passing the site run at 20 to 30-minute frequencies but stop just after a quarter past midnight. Other than two public houses, which are located some distance away, and which are not subject to planning conditions restricting opening hours, most uses in the area around the site would be closed by 23:00. Patrons travelling on foot between the two public houses would not significantly raise ambient noise levels in the late evenings and early mornings. As a result, and in the absence of evidence to the contrary, although the late evening and early morning periods will not be free from ambient noise, sound levels during the hours of opening sought would be substantially lower and provide relief for neighbours from daytime activity.
8. There are no outside seating areas or any outdoor heaters at the front of the site. However, the building has a covered canopy over the main entrance beneath which ashtrays are affixed to the wall. The presence of the covered canopy and ashtrays means that, in all probability, diners and drinkers are likely to use the area at the front of the site as a smoking area, thus creating noise and disturbance. While this area faces away from dwellings on Walkers Lane, which are some distance away, the entrance directly faces the dwellings opposite the site across a relatively short distance. Customers arriving and departing by car or taxi are to be expected to do so at the front of the premises. The coming and going of customers and the opening and closing of car doors would be a further source of noise and disturbance for these neighbours.

³ LPA Reference 18/01284/S73

9. As a result of the combined effect of these considerations, I find that the proposed evening opening hours sought would have a significant adverse effect on the living conditions of neighbours, resulting in unacceptable harm. From the evidence before me, the extended morning opening hours would be unlikely to harm the living conditions of neighbours. Nevertheless, this does not alter the significant adverse effects that the longer evening opening hours would cause, which means that the disputed condition remains reasonable and necessary.
10. I note the points made about compliance with a planning condition previously imposed by the permission, but if I were to allow the appeal, this would result in a new planning permission. A suitable planning condition could secure details of air conditioning and extraction plant. I have also considered the use of conditions to grant temporary approval so that the effects could be monitored. However, for the above reasons, such conditions would not be appropriate or overcome the identified harm, even on a temporary basis.
11. I have taken account of the letters of support from the Rt Hon Justin Madders MP, and the appellant's management measures to minimise the adverse impacts. There is no evidence that the current opening hours have generated significant problems. Nevertheless, a neighbour has objected citing noise concerns. While I accept that they live some distance from the site, I find that the proposal would result in significant harm to nearby residents' quality of life.
12. Pulling all of the above points together, I conclude that the disputed condition remains necessary and reasonable, having regard to the effect that the proposal would have on the living conditions of neighbours, with particular reference to noise and disturbance.
13. Accordingly, the proposal would conflict with Local Plan Policies SOC 5 Health and well-being and DM 30 Noise, which, together and amongst other things, state that development that gives rise to significant adverse impacts on health and quality of life (e.g. soil, noise, water, air or light pollution, and land instability, etc) including residential amenity, will not be allowed. Development which generates noise or is sensitive to it will only be permitted where it accords with the development plan and does not have an unacceptable adverse impact on human health or quality of life. The proposal would also be at odds with Paragraph 127 f) of the Framework, which requires that planning decisions should ensure that developments promote health and well-being, with a high standard of amenity for existing and future users.

Other Considerations and the Planning Balance

14. The business makes a positive contribution to the vibrancy of the street scene and the local night-time economy, adding to the local offer of dining and refreshment experiences for residents. Were the appeal to be allowed, the opening hours of the business would more closely align with public houses in the wider area and support the social and economic objectives of the Framework, which weighs in favour of allowing the appeal. However, there is no substantive evidence before me that the business would be unviable without the increased opening hours sought. Therefore, the weight I attach to these benefits is limited. Other considerations do not therefore outweigh the identified harm and the resultant development plan conflict.

Other Matters

15. The appellant has a Premises Licence to trade later than the planning condition permits, and states that the local planning authority did not object to the licensing authority in respect of the Traveller's Rest, or Ye Olde Red Lion. However, these premises are not subject to planning conditions on the hours of opening, and the planning and licencing regimes are separate and different considerations apply. The appellant has expressed concern over the handling of the application. However, notwithstanding the merits of the points raised, this does not alter or outweigh my findings in respect of the main issue.

Conclusion

16. For the above reasons the restriction of opening hours in its present form remains necessary and reasonable. The appeal is dismissed, and the condition is retained in its present form.

D Child

INSPECTOR