



Appeal Decision

Site visit made on 2 December 2019

by Alexander Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th January 2020

Appeal Ref: APP/M4320/W/19/3236220 40 South Road, Waterloo L22 5PQ

- 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 Mr Chris Bronson against the decision of Sefton Metropolitan Borough Council.
 - The application Ref DC/2018/00536, dated 27 February 2018, was approved on 5 March 2019 and planning permission was granted subject to conditions.
 - The development permitted is the change of use from retail (A1) to a drinking establishment (A4) on the ground floor only including alterations to the existing shop front.
 - The conditions in dispute are Nos 2 and 3 which state that:
 2. *The premises shall not be open for business outside the hours of 09.00 and 23.00 Sunday to Thursday and 9.00 and 23.30 Friday and Saturday.*
 3. *No live music, amplified music or live entertainment shall take place on the premises.*
 - The reasons given for the conditions are:
 2. *In the interests of residential amenity.*
 3. *To prevent noise and disturbance to nearby residents/ to prevent the emission of noise above a level that would be detrimental to the aural amenity of the area.*
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. The appellant has not confirmed whether or not he seeks to delete or vary the subject conditions, although I note the opening hours indicated on the application form suggest the variation of condition No.2 to extend the opening hours to 1000 hours to 0200 hours every day. Notwithstanding this, I have the power to vary the conditions should I find reasonable justification to do so.

Main Issues

3. The main issues are the effect of the development on the living conditions of the occupants of neighbouring and nearby residential properties, with regard to noise and disturbance.

Reasons

4. The appeal site is located on a busy road that comprises a mix of various uses, including commercial, retail, food and drink establishments and residential. The site comprises a ground floor retail unit. On the upper floor are residential

- flats, the access to which is via an entrance off the pavement adjacent to the entrance to the ground floor unit.
5. There are several food and drink establishments, including restaurants and bars, along this stretch of South Road, which suggests that there is a vibrant night time economy in the locality. The appellant contends that other businesses in the vicinity of the site are open until midnight during the week and until 0200 hours on Fridays and Saturdays and has provided a list indicating various opening times for different businesses. The Council's list, prepared in response to the appellant's, indicates that many of these businesses are longstanding uses that do not have planning conditions restricting opening hours; have planning conditions that predate the existing local plan; or, are operating in breach of planning conditions. I note that there are recent planning applications that have been approved that restrict opening hours.
 6. Given the proximity of the site to neighbouring dwellings, the residents of these properties would be sensitive to various sources of noise and disturbance associated with the approved use, including general conversing and loitering outside, opening/closing car doors and car engines running when picking up/dropping off patrons. The approved opening times would ensure that the level of noise and disturbance would unlikely have a significantly harmful effect on the neighbouring residents as it would cease at a reasonable time.
 7. During the evening hours/early hours of the morning, when residents should expect a reasonable level of peacefulness, despite being located within a busy area for night time activity, such noise and disturbance would be more discernible and could unduly disturb neighbouring residents' sleep. This would be to such an extent that it would be significantly harmful to their reasonable expectation of night-time peacefulness and their living conditions. Given the nature of the proposed use, it is likely that some patrons congregating within and around the site would be inebriated, which could increase the level of noise due to raised voices, which would exacerbate the harm caused to neighbouring residents through noise and disturbance. Furthermore, the noise and disturbance could continue after closing hours with people loitering outside or waiting to be picked up.
 8. With regard to condition No.3, the playing of live music, amplified music or live entertainment would likely exacerbate the harm I have identified above. I have considered the variation of this condition to allow such activity to take place at least through some part of the day. However, given the proximity of the flats above, their occupants would likely be unduly disturbed even during the day time.
 9. I have had regard to the Environmental Noise Report prepared by Soundtesting, dated December 2018 and its mitigation recommendations. However, these are based on the site being used as a 'Busy Pub/Bar', with no live music. Therefore, I am not satisfied that mitigation measures secured by condition No.4 attached to the planning permission would satisfactorily mitigate any harmful noise as a result of live music, amplified music or live entertainment.
 10. I find therefore that the removal/variation of the subject conditions would significantly harm the living conditions of neighbouring residents, with regard

to noise and disturbance, contrary to Policies EQ4 and EQ10 of the Local Plan for Sefton 2017, which seek to protect amenity.

Other Matters

11. I have had regard to the appellant's contention that the restrictions imposed by the subject conditions would make it impossible to compete with other businesses. I have also had regard to Merseyside Police granting a licence to sell alcohol up to 0200 hours. However, these have had no bearing on my assessment of the planning merits of the proposal.

Conclusion

12. For the reasons given above, the appeal is dismissed.

Alexander Walker

INSPECTOR