



Appeal Decision

Site visit made on 14 January 2020

by James Taylor BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 February 2020

Appeal Ref: APP/D1780/W/19/3236020

21 Lower Banister Street, Southampton SO15 2EH

- 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 previous planning permissions were granted.
 - The appeal is made by Mr Kannangara against the decision of Southampton City Council.
 - The application Ref 19/00392/FUL, dated 5 March 2019, was refused by notice dated 23 July 2019.
 - The application sought planning permission for alterations to ground floor front/side elevations and change of use from class A3 to mixed use Class A3/A4 without complying with a condition attached to planning permission Ref 09/00336/FUL, dated 4 June 2009; and the change of use of the first floor from A3 (restaurants) to A4 (drinking establishment) (retrospective) without complying with a condition attached to planning permission Ref 13/01840/FUL, dated 7 March 2014.
 - The conditions in dispute are No2 of 09/00336/FUL and No1 of 13/01840/FUL which state respectively that:
 - The ground floor A4 use hereby permitted shall not operate (meaning customers shall not be present on the premises, no preparation, sale or delivery of food or drink for consumption on or off the premises) outside the following hours
Monday to Saturday 08:30 to 12 Midnight
Sunday and recognized public holidays 08:30 to 12 Midnight
Unless otherwise agreed in writing by the Local Planning Authority. A notice to this effect shall be displayed at all times on the premises so as to be visible from the outside.
 - The drinking establishments hereby permitted shall not operate (meaning that customers shall not be present on the premises, no preparation sale or delivery of food or drink for consumption on or off the premises) outside the following hours:
Monday to Thursday 08:30am to 12.00 midnight
Friday and Saturday 08:30am to 12:00 midnight
Sunday and recognized public holidays 08:30 to 12:00 midnight
Unless otherwise agreed in writing by the Local Planning Authority. A notice to this effect shall be displayed at all times on the premises so as to be visible from the outside.
 - The reason given for the conditions is: To protect the amenities of the occupiers of existing nearby residential properties.
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Decision

1. The appeal is dismissed.

Background and main issue

2. The appeal premises comprise a two-storey bar that is subject to two separate planning consents, reflecting that the site formerly comprised two separate planning units. The appellant wishes to extend the opening hours from those originally imposed to between 0830 and 0100 hours the next day, seven days a week. The main issue is the effect of the extended hours of operation on the living conditions of the occupiers of neighbouring properties with particular regard to noise, litter and disturbance.

Reasons

3. 'Saved' Policy SDP1, of the City of Southampton Local Plan Review – Adopted Version 2nd Review (2015) (LP) seeks to ensure that development does not unacceptably affect the health, safety and living conditions of the city and its citizens. The LP 'saved' Policies SDP16 and REI7 set out that noise generating development will not be permitted if it would cause an unacceptable level of noise impact. Furthermore, food and drink uses will be approved providing appropriate planning conditions are imposed to prevent the generation of any undue noise or other form of nuisance.
4. The appeal site is located within the Bedford Place Evening Zone identified by Map 6 of the Southampton City Council, City Centre Action Plan – Adopted Version March 2015 (CCAP). The zone contains a concentration of existing pubs, bars and nightclubs but also includes residential uses, including flats immediately opposite the appeal site. Policy AP8 of the CCAP sets out that proposals for extended opening hours will be subject to restricted opening times as set out within Table 5. Furthermore, it sets out that A3 and A4 uses will be supported subject to meeting other policies including particularly those that seek to protect the living conditions of residents. Table 5 states that the latest opening time in this location should be restricted with planning conditions to midnight. This is in order to restrict the potential nuisance caused by the night time uses. The Council's policies are based on evidence and I am informed that they have been through appropriate consultation.
5. Furthermore, paragraph 4.76 of the CCAP is explicitly clear that this is an area already suffering due to the concentration of licenced premises and activities. It sets out that longer opening hours are unlikely to be permitted unless it can be demonstrated that the changes will not have an adverse impact on the area. In this manner the CCAP reflects the flexibility offered by the 'saved' Policies of the LP. I find this approach consistent with the National Planning Policy Framework. For example, this sets out at paragraph 85 that decisions should take a positive approach to the growth, management and adaptation of town centres. However, it also recognizes that residential development plays an important role in ensuring the vitality of such locations.
6. The appellant has sought to demonstrate that there would be no adverse impact from the extended opening hours. They have highlighted that the immediately adjacent venue opens until 0300 and a number of other premises in the zone operate beyond midnight. The proposal would reduce the ambiguity between the appeal site and those other premises. There is no dispute that there are existing late-night operations occurring within the zone beyond midnight, including one adjacent to 21 Lower Banister Street. However, I do not consider that these historic activities justify setting aside the evidence-based policy.

7. Furthermore, the appellant has set out that the site operated in breach of its opening hours restriction between April 2015 until February 2017. During this time, they were unaware of any complaint from the police. However, I consider the objection from the police to be material. They detail the benefit of staggering the hours of operation at the various establishments, helping to manage the egress of customers from the area. This helps to reduce the potential for anti-social behaviour and nuisance to the residential uses outside of the appeal site and more widely within the zone.
8. Extending the opening hours would result in six nearby venues closing at the same time. Given the capacity of the appeal site venue this would add up to circa 500 people within the public realm at 0100. I acknowledge that this is a maximum figure and the appellant's evidence indicates that under the existing operation the venue attracts much lower numbers. However, it is important to avoid assessments based on one existing operator and to consider what would be the more likely effect of the development. The extended opening hours would likely intensify the number of people in the area at 0100. It would delay the impact of the appeal site's patrons leaving the premises to a later hour when more people are likely to be trying to sleep. Consequently, the proposal would result in greater disturbance to the living conditions of neighbouring residential uses than the existing opening hours would.
9. Additionally, I have noted the presence of the taxi rank opposite the appeal site, adjacent to the nearest residential properties. This provides a point of congregation and may increase noise and activity in the area. Furthermore, being conveniently outside the appeal site some customers would go directly to this point to return home, thus minimising any noise or disturbance to the wider zone. However, I do not find that this significantly mitigates the effect of the extended opening hours. Furthermore, I note the appellant's evidence of queues to enter the adjacent premises around midnight. However, I have no substantive evidence that extending the opening hours of the appeal site would reduce those queues such as to mitigate the effect of the development on the living conditions of local residents.
10. Therefore, on the main issue I find that the extended hours of operation would have a harmful effect on the living conditions of the occupiers of neighbouring properties with particular regard to noise, litter and disturbance. As such, the proposal would be contrary to 'saved' Policies SDP1, SDP16 and REI7 of the LP and Policy AP8 of the CCAP.

Other matters

11. The appellant acknowledges the Council's concerns at page four of their appeal statement. Consequently, they have suggested that another late-night operation (The Rhino), without any planning restrictions on its opening hours, could be limited to midnight as the appeal site is now. In exchange the appeal site could benefit from extended opening hours. The appellant describes this as an 'hours swap', with the intention to mitigate the effects of the proposal. They have indicated that they have control of The Rhino site and could enter into a legal agreement to secure the revised restrictions on both premises. They highlight a precedent for this approach at another venue (Bhudda Lounge) within the same evening zone.
12. However, I find a number of issues with the suggested approach. I note that the alleged precedent did not present the same circumstances as the proposal

before me. For example, the two units subject to the legal agreement for the Bhudda Lounge were located adjacent to one another, whereas the appeal site and The Rhino are some distance apart and separated by a large multi-storey car park. As such, the effects of the operations at the appeal site and The Rhino would be most acutely felt by the occupants of different residential properties. To relocate any potential nuisance, whilst claiming a net reduction within the evening zone as a whole, would be prejudicial to the residents within the immediate environs of the appeal site. Additionally, The Rhino premises have been closed for a significant period of time and I have no evidence to indicate that they are likely to reopen and operate beyond midnight.

13. Moreover, no legal agreement has been submitted within the appeal timeframes in order to secure the alleged benefit. Therefore, even if I were to find sufficient mitigation to outweigh the acknowledged concerns, I can afford no weight to the 'hours swap' suggestion as I have no means to secure it.
14. The appellant has presented a number of potential benefits from the extended opening hours. These include door staff being able to monitor the area for longer periods reducing the potential for nuisance and anti-social behaviour. However, whilst a backland location, on my site visit I noted the presence of street lighting, a number of CCTV cameras and the potential for natural surveillance from adjoining uses. Moreover, it is not the role of the door staff to deal with issues within the public realm. As such I afford this very limited weight.
15. In addition, I acknowledge that the extended opening hours would provide an economic boost to the local area through additional employment and attracting people to the area. However, I find that this would be extremely limited given that the proposed hours extension would only result in one additional hour each day.
16. Finally, I note that the proposals resulted in a number of letters of support for the proposed 'hours swap', and no objection letters. I have read the responses carefully and whilst I place some weight on them as a material consideration, the public consultation process is not determinative of the outcome of the matter. The responses and issues raised do not outweigh the harm that I have found or the conflict with the Council's policies.

Conclusion

17. For the reasons given above I conclude that the appeal should be dismissed.

James Taylor

INSPECTOR