



Appeal Decision

Site visit made on 11 September 2019

by S D Castle BSC(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th April 2020

Appeal Ref: APP/M4320/W/19/3224812

84 College Road, Crosby L23 0RP

- 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 A.S.C Bars Ltd against the decision of Sefton Metropolitan Borough Council.
 - The application Ref DC/2018/01439, dated 16 August 2018, was refused by notice dated 08 February 2019.
 - The application sought change of use of the ground floor of the premises to a coffee shop without complying with condition Nos 3 and 4 attached to planning permission Ref S/2004/0096, dated 05 April 2004.
 - The condition in dispute is No 3 which states that: The premises shall not open for business outside the hours of Mon-Sun 10.00am – 6.00pm.
 - The reason given for the condition is to ensure that nearby properties are not adversely affected by the development.
-

Decision

1. The appeal is allowed and planning permission is granted for change of use of the ground floor of the premises to a coffee shop at 84 College Road, Crosby, L23 0RP in accordance with the application, Ref DC/2018/01439, dated 16 August 2018, without compliance with conditions Nos 3 and 4 previously imposed on planning permission Ref: S/2004/0096 granted on 05 April 2004, but subject to the new conditions set out in the Schedule to this decision.

Background

2. Permission was granted in 2004 for the change of use of the site to a coffee shop. That original permission was subject to conditions that limited opening hours to between 1000h and 1800h Monday to Sunday (condition no 3) and required the premises to be used for a coffee shop and for no other purpose, including any other purpose in Use Class A3 (condition no 4). The appellant is seeking the variation of these conditions to allow the premises to operate as a restaurant open between 0900h and 1800h Monday to Wednesday and 0900 to 2200h Thursday to Sunday.
3. At the time of my site visit, it was clear that the current use of the premises was as a restaurant rather than a coffee shop. The Council have confirmed that it has no objection to the use of the premises as a restaurant, advising that the original condition was worded at a time when A3 uses included drinking establishments and hot food takeaways. A coffee shop providing seating and

hot food clearly falls within the A3 (restaurant) Use Class and would have a similar impact on the surrounding area, in terms of character and living conditions, as other types of use within the A3 Use Class. I have no substantive evidence before me to indicate that the restrictive nature of condition 4 is necessary for the protection of the character and living conditions of surrounding properties. I therefore concur with the Council that condition 4 does not meet the tests for applying conditions stated at paragraph 55 of the National Planning Policy Framework (the Framework). Accordingly, the main issue in this case relates to the proposed extension of the opening hours of the premises.

Main Issue

4. The main issue is the effect of extending the authorised hours of operation on the living conditions of local residents with particular reference to noise and disturbance.

Reasons

5. The site is located at ground floor level on the corner of College Road and Brookfield Avenue. College Road is a busy thoroughfare, including many commercial activities at ground floor level within close proximity to the site. Brookfield Avenue, in contrast, is a quieter and more residential side street. The premises has large glazed windows facing onto both College Road and Brookfield Avenue, with a glazed conservatory projecting towards Brookfield Avenue. The conservatory has double doors facing towards College Road that provide access to a small area used for outdoor seating. A small yard where refuse is stored is located to the rear of the site. The yard opens onto Brookfield Avenue and provides access to the residential property located above the premises. Other dwellings are located above many of the commercial units facing onto College Road and access to a number of these is provided via an alleyway to the rear of the site. Other dwellings are located in close proximity to the site on Brookfield Avenue, including to the rear (north-east) and side (south-east). Whilst double yellow lines bound much of the corner plot, there is public parking available on both College Road and Brookfield Avenue.
6. The proposals are supported by an Environmental Noise Report (ENR) that advises works to the separating floor between the premises and the first-floor dwelling above are necessary to ensure appropriate sound insulation. The ENR also assesses expected 'breakout' noise (i.e noise that would be expected to emanate from the premises), and other commercial noise (internal bins being emptied into external bins), in comparison to existing background noise levels during the proposed extended opening hours. The ENR advises that the expected breakout noise at the nearest sensitive receptors¹, would not exceed the existing background level². The ENR notes that emptying of the bins externally already occurs and that the noise is for a very limited duration. In conclusion, the ENR finds that the expected breakout and commercial noise would likely have a low impact on nearby residents.

¹ 1m outside the first-floor window on the Brookfield Avenue facade of number 84 College Road; 1m outside the first-floor window of 82 College Road; and 1m outside the first-floor window of 1 Brookfield Avenue.

² Measured LA90,1-hour background level.

7. The ENR does not assess the noise impact of the outdoor seating area. It is proposed by the appellant, however, to cease use of this area no later than 2030h. Such a restriction could reasonably be secured through condition. The ENR is based on a range of assumptions, including that the majority of windows and doors will remain closed and that only low-level background music is played. Whilst there may be some future variability in meeting these assumptions, the conservatory has only limited openings. There is no substantive evidence before me to suggest that the technical conclusions of the ENR are incorrect. As such, I am satisfied the ENR represents a reasonable assessment of the noise impact of the proposals.
8. I acknowledge the strength of objection from interested parties and I do not underestimate the concerns of those living near the appeal site, including regarding the potential for increased disturbance due to anti-social behaviour. In addition to noise from the restaurant itself, the proposal would result in increased disturbance from comings and goings and vehicular movements in the late evening. The Council's Environmental Health Officer does not, however, object to the proposal with regards to noise or disturbance. There is no substantive evidence before me, such as a local police force objection, to indicate that there are existing issues with anti-social behaviour in the surrounding area, or that a small restaurant would, individually or cumulatively with existing uses, result in any such harm.
9. Whilst the surrounding area is predominantly residential, College Road is a relatively busy thoroughfare including takeaways, a petrol station, a public house and bus stop near to the appeal site. All of these existing uses contribute to late evening activity. Given the small scale of the premises and the existing late evening activity in the surrounding area, I am not persuaded that the proposal would result in an unacceptable or significant adverse effect, cumulative or otherwise, on the living conditions of local residents in terms of noise or disturbance.
10. It is not uncommon for restaurants and hot food takeaways to be located close to residential accommodation and for fumes and odours to be dealt with by means of extraction equipment. I note that the Council's Environmental Health Officer deems the extraction facilities acceptable and I have no substantive evidence before me to the contrary.
11. Overall, therefore, I find the proposal in accordance with Policies ED2 part 8(c), HC3 part 2(a) and EQ10 part 1(a) of the Sefton Council Local Plan (2017), which taken together require, amongst other things, development to have no unacceptable impact on the living conditions of neighbouring properties. Furthermore, the proposal accords with the Framework, including paragraph 180 which requires decisions to mitigate, and reduce to a minimum, potential adverse impacts resulting from noise from a new development and to avoid noise giving rise to significant adverse impacts on health and quality of life.

Other Matters

12. The proposal would result in increased demand for on-street parking in the local area. On my site visit, I noted that on-street parking was available on many roads within the surrounding area, including College Road. The Local Highway Authority has no objection to the proposed use or extended hours. As such, and given the small scale of the premises, I am satisfied that the level of

current on-street parking would meet additional demand without detriment to the safe and proper functioning of the highway.

13. I have no substantive evidence to suggest the restaurant would generate unusual refuse, waste or rodent problems and there is other legislation to deal with such issues if refuse is disposed of in an irresponsible manner. Furthermore, I do not accept that the visual appearance of the rear yard would be detrimentally affected by this current proposal. Such issues should not be considered inevitable consequences of the proposal but are rather a question of individual behaviour and appropriate management.
14. I have considered the argument that the grant of planning permission would set a precedent for other similar developments. However, each application and appeal must be determined on its individual merits, and a generalised concern of this nature does not justify the dismissal of this appeal.

Conditions

15. I have considered the Council's suggested conditions against the requirements of paragraph 55 of the Framework and with reference to the Planning Practice Guidance. I find them to be reasonable and necessary in the circumstances of this case and note that the appellant has agreed to restrictions on live events, entertainment and amplified music. I have amended some conditions in the interests of clarity where necessary. Given the change of use has already occurred, it is not necessary to include the standard implementation condition. It is necessary to define the plans in the interest of clarity. In the interest of the living conditions of the occupiers of nearby dwellings, conditions have been imposed in respect of opening hours, outdoor seating, sound insulation, music and entertainment noise.

Conclusion

16. For the above reasons, I allow the appeal subject to the conditions in the attached Schedule.

S D Castle

INSPECTOR

Schedule of conditions attached to Appeal Decision
Appeal Ref: APP/M4320/W/19/3224812
84 College Road, Crosby L23 0RP

- 1) The development hereby permitted shall be carried out in accordance with the following details and plans: Location Plan; Proposed Floor Plan Dwg no 18/45/02 rev A; Equipment Specification contained within the Odour Control Risk Assessment.
- 2) The sound insulation scheme as detailed in section 8.2 of the Soundtesting Environmental Noise Report (14th January 2019) Ref: 11865 Rev 1, or another scheme of the same sound reduction performance, shall be fully installed within six months of the date of this permission and shall be retained thereafter.
- 3) No live music, amplified music or live entertainment shall take place within the premises or in external areas.
- 4) The premises shall not be open for customers outside the hours of 0900h to 1800h Monday to Wednesday and 0900h to 2200h Thursday to Sunday.
- 5) There shall be no outdoor seating outside of the hours of 0900h to 2030h Monday to Sunday. At no time shall customer seating be provided within the rear yard area shown on dwg no 18/45/02 rev A.