



Appeal Decision

Site visit made on 19 May 2020

by **L McKay MA MRTPI**

Inspector appointed by the Secretary of State

Decision date: 2nd June 2020.

Appeal Ref: APP/V1260/W/19/3242618

Baggies Coffee House, 43 High Street, Christchurch, Dorset BH23 1AS

- 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 Ahmed Ismail (Ahmed Ismail Enterprise Limited) against the decision of Bournemouth, Christchurch and Poole Council.
 - The application Ref 8/19/1101/CONDR, dated 27 June 2019, was refused by notice dated 5 December 2019.
 - The application sought planning permission for alterations and change of use from Class A1 Shop to Class A3 for the sale of hot food and drink for consumption on and off the premises without complying with a condition attached to planning permission Ref 8/96/0414C, dated 3 April 1997.
 - The condition in dispute is No 2 which states that: *The proposed use shall be restricted to the hours of 6.30am – 5.30pm Monday - Saturday and 8.30am – 5.30pm Sunday.*
 - The reason given for the condition is: *Otherwise the proposed development could place unacceptable pressures on the site and locality.*
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Decision

1. The appeal is dismissed.

Background and Main Issue

2. The appellant wishes to extend the opening hours of the appeal site from those originally imposed to allow for the selling of late-night refreshment on and off the premises until 02.00am seven days a week and the selling of alcohol from 09.00am until 02.00am seven days a week. The main issue is the effect that these opening times would have on the living conditions of neighbouring residents in respect of noise and disturbance.

Reasons

3. Christchurch High Street comprises predominantly two-storey properties with commercial units at ground floor and a mix of uses, including residential accommodation, above. Although at the time of my site visit most premises were closed due to Covid-19 restrictions, there were nevertheless numerous people in the High Street and traffic was frequent. It is reasonable to assume that under normal circumstances, the High Street is considerably busier during the day. To the rear of the appeal site is a development of retirement apartments, built after the original planning permission was granted and accessed via a walkway beside No 43.

4. While the current permitted use of the appeal site would result in some noise and disturbance from people coming and going, vehicle movements and vehicle doors closing, during the day such noise would not seem intrusive to neighbouring occupiers given the activity associated with the High Street. While there would still be some activity in the local area after the shops close, particularly from people visiting restaurants, pubs and bars in Church Street, it is likely to be significantly less than during the day. From my observations on site and the appeal submissions, I am not aware of any premises close to the appeal site opening later than midnight Monday to Saturday and 11pm on Sundays. Consequently, the local area is likely to be much quieter after these times and residents would expect a quieter environment.
5. The appellant identifies that there are no other local late-night options for food and alcohol, therefore the site would be likely to be popular with people leaving other premises. Given the small size of the unit, customers would be likely to congregate outside on the pavement and in the walkway while waiting for orders and consuming their purchases. This is likely to generate considerable noise from customers socialising, concentrated into a small area close to numerous residential properties. Consequently, this would be highly intrusive and disruptive to neighbouring residents.
6. There are no measures before me to manage or mitigate these impacts, or to effectively disperse customers from the area. There is therefore also potential for anti-social behaviour and alcohol related disorder as a result of the congregation of people, which could further add to the noise and disturbance resulting from the proposal.
7. Although a premises licence has been granted for the appeal site, Planning and Licencing are separate regimes governed by different legislation, and each considers different matters. However, having regard to the Planning Practice Guidance (PPG), it is relevant to consider whether the potential for adverse noise impacts will be addressed through licensing controls¹. The information before me indicates that the most recent licence granted in November 2019 allows the sale of alcohol only until midnight, 2 hours earlier than is now sought in this appeal. I have no details of the licence conditions, including any measures to mitigate impacts on neighbours. I therefore cannot be certain that the licence would provide for noise management sufficient to mitigate the significant harm to living conditions that would result from the proposal.
8. The Council has raised concern about the area to the rear of the site being used as a smoking area, however this does not form part of the proposal before me and in any event could be controlled by planning condition. The walkway provides access to the accommodation behind however, so falls outside of the appellant's control and therefore could not be managed by condition.
9. Accordingly, the extension of the proposed opening times would significantly harm the living conditions of neighbouring residents in respect of noise and disturbance. As such, the proposal would conflict with Policy HE2 of the Christchurch and East Dorset Local Plan Part 1 – Core Strategy 2014 (CEDLP) which, amongst other things, requires development to be compatible with its surroundings including minimising general disturbance to amenity. Consequently, as it would not accord with the policies of the CEDLP, the

¹ Paragraph: 006 Reference ID: 30-006-20190722

proposal would not benefit from the presumption in favour of sustainable development set out in CEDLP Policy KS1.

10. Furthermore, it would conflict with the requirements of the National Planning Policy Framework (the Framework) to provide a high standard of amenity for existing and future users.

Other Matters

11. The appeal site is a Grade II listed building and lies within the Christchurch Central Conservation Area. Framework paragraph 193 requires great weight to be given to the conservation of designated heritage assets. The listed building derives considerable significance from its traditional architecture and position within a group with properties adjacent and opposite, which are of similar design and commercial function. As neither the use nor the physical structure of the listed building is proposed to change, the proposal would not harm any features of special architectural or historic interest which it possesses or any features which contribute to its significance, which would therefore be preserved.
12. The Conservation Area derives significance from the historic pattern of streets, plot sizes and open spaces, the relationship with the rivers, views towards key landmarks such as the Priory, and the high-quality townscape, with considerable numbers of historic and high-status buildings. Large parts of the Conservation Area are dominated by commercial uses and consequently, commercial activity forms a significant part of its character and appearance. Despite its modern shopfront, the appeal site still has some detailing and traditional features which contribute positively to the townscape and the Conservation Area.
13. The additional noise and activity from the appeal proposal would change the otherwise quiet character of the area immediately around the site during the late evening and early morning. However, this impact would be limited to a small, discrete part of the Conservation Area and would cease when the premises were closed. Therefore, the proposal would not materially alter the character of the Conservation Area as a whole. Accordingly, the character and appearance of the Conservation Area, and its significance, would be preserved. My conclusion in respect of the Conservation Area does not however justify the harm identified to the living conditions of neighbours from noise and disturbance late at night.
14. Although the Council cites Saved Policy BE5 of the Christchurch Local Plan 2001 (CLP) in its decision, that Policy relates to development outside of but close to the boundaries of a Conservation Area. As the appeal site is within the Conservation Area, that policy has not been determinative in my decision on this appeal.
15. The proposal would expand the opening hours of a use appropriate to the town centre location and as such I find no conflict with CEDLP Policy CH2 which seeks to focus town centre uses within the Town Centre Boundary. The proposal would expand evening economy uses and contribute to the vitality of the area as encouraged by CEDLP Policy CH1. However, the Town Centre Vision set out in that Policy also seeks to create a mixed-use environment with residential as well as commercial uses, so there is a need for a balance between commercial and residential interests.

16. Any benefit from the proposal to the appellant's business portfolio is a private benefit and therefore carries minimal weight. Although the appellant identifies a gap in the market for late-night provision, in the context of the Town Centre as a whole, the economic benefits resulting from a proposal of this limited scale would be commensurately limited, and would be comfortably outweighed by the significant harm to living conditions of neighbouring residents.
17. While I note the appellant's concerns about the way in which the Council dealt with the original application, this is not a matter within my remit in determining this appeal under s78 of the Act.

Conclusion

18. For the reasons above, the appeal is dismissed.

L McKay

INSPECTOR