



Appeal Decision

Site visit made on 15 June 2020 by A J Sutton BA Hons DipTP MRTPI

by Zoe Raygen DipURP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 July 2020

Appeal Ref: APP/G1630/W/20/3244699

9 Church Road, Bishops Cleeve, Cheltenham, GL52 8LR

- 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 Peter Trowse against the decision of Tewkesbury Borough Council.
 - The application Ref 19/00908/FUL, dated 17 September 2019, was approved on 29 November 2019 and planning permission was granted subject to conditions.
 - The development permitted is change of use of existing ground floor of number 9 Church Road from class A3 café to A4 licenced café and bar.
 - The conditions in dispute are Nos 3, 4 and 5 which state that:
 - (3) The development hereby permitted shall not be open to customers outside the following hours of:-
 - 08:00 to 22:30 Monday to Thursday
 - 08:00 to 23:00 Friday and Saturday
 - 09:00 to 16:00 on SundayDeliveries to, and collections from, the development shall not be made outside the following hours:-
 - 07:00am to 22:00 Monday to Saturday
 - 8:30 to 16:00 on Sunday.
 - (4) There shall be no amplified music after the hours of 22:00 Monday to Thursday and 22:30 on Friday and Saturday.
 - (5) All outside seating shall be removed after the hours of:-
 - 21:00 Monday to Thursday
 - 22:30 Friday and Saturday
 - 16:00 on Sunday.
 - The reasons given for the conditions are:
 - (3) To safeguard the amenities of the locality in accordance with the NPPF and Policy SD14 of the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy (December 2017).
 - (4) To ensure the proposal preserves residential amenity and to prevent unacceptable noise pollution to the detriment of human health.
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Decision

1. The appeal is allowed and planning permission Ref 19/00908/FUL dated 29 November 2019 for the change of use of existing ground floor of no 9 Church Road from class A3 café to A4 licenced café and bar, at 9 Church Road, Bishops Cleeve, Cheltenham, GL52 8LR, granted by Tewkesbury Borough Council is varied by deleting conditions 3, 4 and 5 to be replaced by modified conditions 3, 4 and 5 as follows:

- 3) The premises shall only be open for customers between the following hours:
0800 - 2300 Monday - Saturday
0900- 1700 Sunday.

Deliveries shall be taken at or despatched from the premises only between the following hours:
0700 - 2200 Monday – Saturday
0830– 1600 Sunday.
- 4) Amplified or other music may only be played inside the premises between the following hours:
0800 - 2300 Monday – Saturday
0900 – 1700 Sunday.
- 5) All outside seating shall be removed except between the following hours:
0800 – 2100 Monday – Thursday
0800 – 2230 Friday – Saturday
0900 – 1700 Sunday.

Appeal Procedure

2. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Procedural Matters

3. The description of development stated on the decision notice and appeal form differ from that stated on the original application form. The planning history submitted by the Council confirms that the appeal property benefited from consent for change of use from A1 retail to A3 restaurant¹. The description of proposed development on the application form was as such inaccurate and the description of development on the decision notice and appeal form appear correct, and therefore forms the basis for this recommendation.
4. Although not open, I observed during my site visit the planning permission the subject of this appeal, had been implemented and the premises had been converted to a café bar.

Background and Main Issue

5. The ground floor of the appeal property has consent for a café and bar. The appellant originally applied for opening hours between 0800 to 2300 seven days a week. The Council, in the interest of safeguarding the living conditions of occupiers of the residential units on the first floor, attached conditions to the consent, limiting opening hours, delivery times, playing of amplified music and the use of the outside seating area.
6. The appellant objects to conditions 3,4 and 5 stating he does not believe that the conditions are in keeping with decisions on other commercial properties in the area.

¹ Ref 13/01040/FUL

7. The principle of the development is not in dispute and was assessed as being consistent with development plan policies which seek to support economic growth in the service centre of Bishops Cleeve. I have observed nothing which would lead me to contradict this conclusion.
8. The main issue is, therefore, the effect of modifying or removing conditions 3,4 and 5 on the living conditions of occupiers of residential properties in the locality, with particular reference to noise pollution.

Reasons for Recommendation

9. The appeal property is located in the retail centre of Bishops Cleeve, which is a large and expanding settlement. It forms one unit in a row of commercial premises supporting a range of business uses including a hairdresser, takeaway outlets and a restaurant. Commercial uses are generally confined to the ground floor, with the exception of No 11 which is a restaurant and No 3 which has permission for mixed uses. The remaining first floor units appear for residential use. The residential unit immediately above the appeal property has a balcony area which overlooks the pavement and Church Road.
10. The row of premises is set back from the road, and benefits from a large pavement frontage, which is used, in the case of the appeal property, as an outside seating area. The wider area comprises a mix of retail/commercial uses including supermarkets and public houses.

Condition 3 Opening Hours

11. The nature of the permitted use would result in patrons coming and going and enjoying the outside seating area throughout the evening. Playing of music adds to the atmosphere and ambience of an establishment and as such would be an important aspect which would contribute to the success of the café bar. As such the approved leisure use has the potential to generate types and levels of noise which could harm the quality of life of those occupying nearby residential units.
12. Occupants of the residential units in the area would expect some unwanted sounds when living in such a central location. However, they should still be afforded protection from unacceptable levels of disturbance resulting from development. Indeed, this would be consistent with Policy SD14 of the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy 2017 (JCS) which states that development should not create or exacerbate conditions which could impact on human health. As such it is reasonable and necessary to attach conditions, which whilst allowing the business to thrive, would ensure the health and wellbeing of local residents.
13. The submitted evidence indicates that planning permission for the use of the first floor at No 11 as a restaurant has a condition restricting opening hours from 0830 to 2400. I observed on the site visit that the restaurant advertises closing hours at 2400 for seven days a week. The advertised closing times at the takeaway outlets at No 1 and No 3 vary with the latest closing time being 2330. Regardless, the nature of these businesses is distinctly different from that of the licensed bar. In particular, none of the premises have outside seating areas and they are unlikely to play amplified music at a volume which would disturb occupants of the residential units.

14. In light of the nature of the permitted use, distinct in character from other food and drink outlets in the row, it is reasonable that the evening opening hours should be less than neighbouring uses. The closing time of 2300 Monday to Saturday provides an appropriate balance between ensuring the economic viability of the café bar whilst providing the occupiers of residential properties quieter periods later at night. This would generally be in line with the evening opening hours of other premises in the row, whilst being slightly reduced to reflect the particular nature of the use.
15. There is nothing in the evidence to clarify the Council's reasoning for requiring the premises to close half an hour earlier Monday to Thursday. Given the circumstances in this case outlined above, extending the opening hour until 2300 on these days would have a negligible effect on the living conditions of residents.
16. An earlier closing time on Sundays seems reasonable as, given the potential for noise generation, it would allow an extended quieter evening period for one day in the week. The Council has stated that it would accept an extension to the Sunday opening hours until 1700.
17. I have no substantiated evidence before me to indicate what would be considered a reasonable closing time on Sunday evenings, which would address the business needs and protect the living conditions of residents. Whilst not being able to open on Sunday evenings may affect the business, there is nothing conclusive to suggest that it would in itself negate the overall benefit of the permission for the change of use. Therefore, on balance, given the difference I have identified between this use and the others in the area, it is therefore recommended that the opening hours on Sundays should only be extended to that accepted by the Council.
18. The appellant has not indicated dissatisfaction with the restrictions on delivery times. The permitted times stated for deliveries appear reasonable and should not be modified.
19. Therefore, in summary, for the reasons outlined above it is recommended that condition 3 is deleted and replaced with modified condition 3 which allows opening of the café bar between the hours of 0800 – 2300 Monday to Saturday and 0900-1700 on Sundays.

Condition 4 Amplified Music

20. The Council states that the premises have not been adapted to attenuate noise generated from the bar. Whilst the current owner intends music would be played as background, I must have regard to ownership of premises changing over time.
21. Given the lack of any adaption it would be necessary to control the playing of amplified music in the interest of the health and quality of life of occupants of nearby residential units. However, as outlined above, restrictions on opening hours would address the potential harmful effects on the living conditions of those occupying the residential units.
22. Therefore, it logically and reasonably follows that existing condition 4 should be altered to reflect the recommended changes to the opening hours of the café bar.

23. Taking into account the planning permission does not permit the café bar to be open to customers on Sunday evenings, and as such providing a substantial period of respite for residents from the activities of the café bar, it would be unreasonable to restrict the playing of music during the time that the cafe bar is open on this day.
24. Therefore, it is recommended that condition 4 is replaced with a modified condition 4 to allow amplified music to be played within the modified stated opening hours of the café bar. Furthermore, changes to the wording of the original condition have been made in the interest of precision and enforceability.

Condition 5 Outside Seating

25. Outside seating areas have the potential to add to the vibrancy of a centre, however patrons using such areas will generate noise, and it is reasonable to assume noise levels will increase in a bar like setting which would be more prominent during evening periods. The nature of the noise is likely to be less intermittent than that generated from other uses in the area and as such could result in an unacceptable level of noise which would harmfully affect those living near the appeal property, particularly later at night.
26. The outside seating area of the café bar, on the pavement fronting Church Road, is not contained other than by two rows of small planters. The character of noise emanating from patrons on this area, which has an open and public aspect, would be more noticeable than that created by patrons inside the premises. As such condition 5 is reasonable and necessary.
27. However, it is recommended that condition 5 is replaced by a condition with slightly modified wording that specifies the period in which outside seating will be removed and reflects the amended Sunday opening hours, in the interest of consistency with the original decision and precision.

Other Matters

28. It is noted that there are no records of complaints associated with the premises. Furthermore, although appropriate licensing has been secured and other legislation controlling nuisance exists, the harmful effects of noise is a material consideration to which I have had regard in reaching this recommendation.
29. Two public houses are located in the centre of Bishops Cleeve. In all probability these establishments will play amplified music. I have had regard to the appellant's comment regarding loud recorded and live music events. I have nothing before me that confirms the frequency of such occurrences. I observed, when conducting the site visit, in both instances their outside seating areas was situated some distance from residential properties, with the exception of any accommodation above the premises. They are distinctly different in this respect from the case before me and as such I have attached limited weight to this matter.
30. I note the comments regarding ownership of the residential unit immediately above the café bar. I have also had regard to concerns raised regarding potentially vexatious representations from residents made, and consultation with the environmental health officer, during the planning application process. Regardless, for reasons outlined above the use permitted has the potential to

harm the living conditions of those occupying the first floor residential units and other residential properties in the area, now and in the future, which is material in this case.

Conclusion and Recommendation

31. For the reasons outlined above, and having regard to all other matters raised, I recommend that the appeal is allowed, and, existing conditions 3, 4 and 5 are deleted and replaced with modified conditions 3, 4 and 5 as outlined above.

A J Sutton

APPEAL PLANNING OFFICER

Inspector's Decision

32. I have considered all the submitted evidence and concur that the appeal should be allowed, and, existing conditions 3, 4 and 5 are deleted and replaced with modified conditions 3, 4 and 5 as outlined above.

Zoe Raygen

INSPECTOR