



Appeal Decision

Site visit made on 30 June 2020

by Alison Scott BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 July 2020

Appeal Ref: APP/N4720/W/20/3248559

4 Austhorpe Road, Cross Gates, Leeds LS15 8DX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning subject to conditions.
 - The appeal is made by Mr G Masllavica against the decision of Leeds City Council.
 - The application Ref 19/07357/FU, dated 28 November 2019, was granted subject to conditions on 12 February 2020.
 - The development proposed is Change of use of part upper floor to A4 without complying with a condition attached to planning permission Ref 19/07357/FU, dated 28 November 2019.
 - The condition in dispute is No 2 which states that: The opening hours shall be restricted to 07.30 and 00.00 hours Monday to Saturday and 08.00 – 23.30 hours on Sundays, including Bank Holidays. There shall be no opening on Public Holidays.
 - The reason given for the condition is: In the interests of residential amenity.
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Decision

1. The appeal is dismissed insofar as it relates to the extended hours of opening. The appeal is allowed insofar as it relates to the variation of Condition 2 to allow opening on a Public Holiday at 4 Austhorpe Road, Cross Gates, Leeds LS15 8DX in accordance with the terms of application Ref 19/07357/FU, dated 28 November 2019 and subject to the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with the approved plans listed in the schedule.
 - 2) The opening hours shall be restricted to 07:30 – 00:00 hours Monday to Saturday and 08:00 – 23:30 hours on Sundays, including Bank and Public Holidays.
 - 3) The hours of delivery to and from the premises shall be restricted between 08:00 – 18:00 hours Monday to Saturday and 09:00 – 13:00 hours on Saturdays with no collections on Sunday or Bank and Public Holidays.
 - 4) No bottles, glass or other waste shall be taken to/from the premises nor disposed of in any external areas before 09:00 or after 21:00 hours on any day.
 - 5) No music or amplified sound (including public address systems and speakers) or television broadcast shown at the premises shall be audible from outside the premises.
 - 6) No external extract ventilation system or air conditioning equipment shall be installed and operated until full details (specification and siting)

have been submitted to and approved in writing by the Local Planning Authority. Only the approved system(s) shall be installed which shall thereafter also be maintained in accordance with the manufacturer recommendations.

- 7) Within 3 months from the date of this permission, full details for the provision of a bin store (including siting, materials and means of enclosure) and (where applicable) storage of wastes and access for their collection, shall be submitted to and approved in writing by the Local Planning Authority. The approved measures shall then be implemented in full and retained for the lifetime of the development.

Procedural Matter

2. The appeal site has been operating as an independent bar to the ground floor restaurant for a number of years and this has been confirmed by the appellant. Therefore a retrospective change of use was granted by the Council and I concur with this.

Main Issue

3. The main issue is the effect of the opening hours on the living conditions of local residents.

Reasons

4. The appeal site is the first floor of 4 Austhorpe Road called Locus Bar and occupies the space above a retail and barbers unit and Zobas restaurant. It provides its own entrance via a side door located at the entry of Back Austhorpe Road. The site is located within the Cross Gates area of Leeds and is largely commercial in nature.
5. The use was granted A4 retrospective planning permission by the Council in 2019 with Condition 2 imposed to restrict the hours of opening of the premises. This permission restricted opening hours below that of what the appellant had originally requested for opening hours on a Friday and Saturday evening. The appellant therefore seeks to amend the condition to allow more flexibility to open later into the evening on a Friday and Saturday. They seek to vary Condition 2 to allow extended opening hours specifically on a Friday and Saturday until 01:00.
6. Paragraph 55 of the National Planning Policy Framework, (the Framework) advises that conditions should only be imposed where they are necessary, relevant to planning and to the development, enforceable, precise and reasonable in all other respects. The Planning Practice Guidance refers to this as the 'six tests'. It also emphasises that clear and precise reasons must be given for the imposition of every condition.
7. I am aware of the relationship of the appeal site to residential dwellings within close proximity to the appeal site with No. 11 Austhorpe Road as well as conversions approved at Tranquillity House within close proximity to the appeal site and the living conditions of occupiers should be protected.
8. Given the closeness of the appeal site to the main road, taxis and cars would likely draw up on the main road close to its entrance, despite the double yellow lines along the road. There is very real potential for the sounds of engines running and noise from car radios and doors slamming to result in disturbance

to local residents, especially where there is an expectation that a level of quiet would occur at this time when background levels would be reduced.

9. Even though door staff would encourage customers to wait inside for taxis, this could not be secured by condition. Furthermore, there are no other venues of this type open until 01:00 within the immediate area, and the local restaurants do not have particularly late closing times. Therefore, noise from voices and the sounds associated with vehicles would inevitably be associated with this venue. To that end, I do not find in favour of the variation of Condition 2 as requested in this regard.
10. The appellant seeks permission to allow trading on a Public Holiday as Condition 2 prevents opening on a public holiday, although it permits opening the premises on Bank Holiday's. The Council have since confirmed their agreement to Public Holiday opening and I can find no reason to differentiate between Bank Holidays and Public Holidays openings with respect to its effect on the living conditions of local residents. On this basis, amending Condition 2 would meet the requirements of paragraph 55 of the Framework. I allow a split decision.

Other Matters

11. The appellant has been granted a premises licence by the Council and this has been subject to its own scrutiny under separate licensing laws. The premises licence that has been issued by the Council can permit opening hours that are different to those required by condition of a planning application. Whilst no complaints by individuals may have been registered to the Council since the premises became in operation, this is not to say that extended opening hours are acceptable.
12. I appreciate licensing laws do have the ability to provide their own restrictions and the licence can be revoked by the Council should this be necessary. However, both planning and licensing Acts are different forms of legislation, and can consider different matters. I apply limited weight to the fact that approved licensing hours can be less restrictive than those attributed by a planning permission.
13. There may be other public house venues that operate with later trading hours although I am not presented with the precise circumstances of these and furthermore, they are not located particularly close to the appeal site. Door staff employed at the premises cannot control the behaviours of patrons and whilst it may be a wine bar establishment, this is not to reasonably say disturbance would not occur. A personal permission would not be appropriate in this respect as it would not provide certainty that unacceptable levels of noise and disturbance to the living conditions of local residents would not occur.
14. It has been drawn to my attention by the Council that they have granted¹ permission for the installation of external area to first floor rear. This permission has been approved with a number of conditions. Condition 4 specifically requires the external area to the first floor rear elevation to be closed 30 minutes prior to the closing of the main use, on any day. There would be no requirement to alter the conditions attached to this permission in that regard.

¹ Ref 20/02290/FU

Conclusion and Conditions

15. I have found that the extended opening hours would result in harm arising to the living conditions of local residents and on this basis the appeal is not supported. However, I find no harm would arise to permitting the business to open on Public Holidays, and therefore I accordingly amend Condition 2.
16. As this is a Section 73 application, it is possible to amend, vary or add conditions as required. I have re-imposed the other conditions attached to the permission although I have slightly altered Condition 5 to replace the word Tannoy system, with public address system.
17. The appeal therefore succeeds on the grounds of trading for business on Public Holidays.

Alison Scott

INSPECTOR