



Appeal Decision

Site visit made on 14 July 2020

by R E Jones BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 September 2020

Appeal Ref: APP/B1930/W/20/3245102

9A George Street, St Albans AL3 4ER

- 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. and Mrs. Lee against the decision of St. Albans City and District Council.
- The application Ref 5/19/1063, dated 17 April 2019, was refused by notice dated 13 November 2019.
- The application sought planning permission for variation of condition 3 (opening hours) and condition 5 (restricted area of use for Class A3 use and garden) and removal of condition 4 (Class A3 use ancillary to Class A1 retail use only) and condition 6 (no food or drink shall be sold for consumption off the premises) of planning permission 5/98/1875 to allow Class A3 use to rear building to not be ancillary to Class A1 retail use, to provide takeaway facility, extension to Class A3 use to rear part building and external seating area and extension of opening hours to 08:00 to 18:00 hours Monday to Saturdays and between 10:00 to 17:00 hours Sundays and Bank Holiday Mondays, without complying with conditions attached to planning permission Ref 5/2007/2108 dated 14 January 2008.
- The conditions in dispute are Nos 8, 13 and 16, which state that:
 - 8: The use hereby permitted shall not be open to customers outside the following times: 08:00 hours and 18:00 hours on Mondays to Saturdays inclusive and 10:00 hours and 17:00 hours on Sundays and Public Holidays. Any customers remaining on the premises after those hours shall leave the premises not later than 18:20 hours on Mondays to Saturdays inclusive and not later than 17:20 hours on Sundays and Public Holidays.*
 - 13: The area of the property used for the tea room and external eating area shall be limited to that shown on amended drawing no 'Nov 07' received on the 21/11/07 and the use hereby permitted shall not extend into any other part of the premises without the prior written permission of the Local Planning Authority.*
 - 16: There shall be no more than 6 tables accommodating a maximum of 24 people in each of the two sections of the outside area (the courtyard and the rear garden).*
- The reasons given for the conditions are:
 - 8. To safeguard the amenities of the locality and residential occupiers. To comply with Policies 9 & 57 of the St. Albans District Local Plan Review 1994.*
 - 13. To safeguard the amenities of the nearby residents and the character of the Cathedral Precinct. To comply with Policies 9, 57 and 85 of the St. Albans District Local Plan Review 1994.*
 - 16. In the interests of the amenity of nearby residential properties. To comply with Policy 9 of the St. Albans District Local Plan Review 1994.*

Decision

1. The appeal is dismissed.

Procedural Matter

2. During my site visit I observed a small marquee covering additional seating and located adjacent to the tearoom courtyard. This does not form part of the areas permitted for outdoor seating and discussions are currently ongoing between the appellant and the Council regarding this area's use. This area is not included as a matter that is before me for determination; accordingly, it does not form part of my assessment.

Background and Main Issues

3. Planning permission was granted for use of the premises from retail (Class A1) to a tearoom (Class A3) (Ref 5/98/1875) (the 1998 permission). The Council subsequently issued a new permission (Ref 5/2007/2108) (the 2008 permission) to amend conditions on that 1998 permission. The description of development I have used in the banner heading above refers to the 2008 permission as this is the act of development that the permission subject to this appeal relates to.
4. The 2008 permission was subject to conditions that revised opening hours (condition 8); identified areas of outdoor seating where the use was permissible (condition 13); and included a condition restricting the number of tables and customers within those outdoor seating areas (condition 16). These conditions were justified with reference to the development plan which is still in place, namely the City and District of St Albans District Local Plan Review, adopted 30 November 1994) (the Local Plan).
5. The reasons for imposing those conditions, and the reasons for refusal, relate to safeguarding the amenity of nearby residents and the character of the St Albans Conservation Area (SACA).
6. The appellant proposes to extend the opening hours from 08:00-18:00 to 08:00-21:00 from Thursday to Saturday and from 10:00-17:00 to 08:30 - 17:00 on Sundays and Bank Holidays, to increase the extent of the area permissible for outdoor seating and to remove the restriction on the number of tables and customers allowed in the tearoom and outdoor seating areas at the appeal site.
7. Therefore, the main issues are the effect that varying conditions 8 and 13 and removing condition 16 would have on the living conditions of nearby residents, with particular regard to noise and disturbance; and the effect of varying condition 13 would have on the character and appearance of the St. Albans conservation area (SACA).

Reasons

External seating area

8. George Street comprises a traditional terrace in the city centre with the ground floors along the frontage largely occupied by shops and eating establishments. The upper floors and rear portions of the individual properties are occupied by residential flats and dwellings, while their slender, albeit long private gardens back onto the grounds of the grade 1 listed St. Albans cathedral.
9. The appeal site, a café situated behind the main commercial frontage of George Street occupies a series of connecting outbuildings and an open area. Outdoor

seating is restricted to the tearoom courtyard and a rectangular area towards the rear of the site known as the 'al fresco eating area'. Although located in a city centre location, the appeal site's position to the rear of the commercial frontage in close proximity to dwellings and their private gardens, gives the immediate area a residential character.

10. The area of proposed outdoor seating would be partially enclosed by walls and a picket fence. It would adjoin the existing al fresco eating area and be comparable in terms of its size. It would extend to within a short distance of the rear conservatory of No 10 George Street, and be separated from this property and its rear garden by a part wall, part fence boundary. The proposed seating area would also be in close proximity to, and be visible from upper floor rear windows of Nos 8 and 9 George Street. The proposed area would allow for a comparable number of customers to the al fresco eating area while being closer to residential properties. When combined with the existing outdoor seating areas, the resultant social interaction when these areas are in use is likely to create significantly louder noise levels than is presently experienced at the site. The proximity of residents who occupy those dwellings and flats either side of the appeal site, mean that the likely noise levels would be significantly more intrusive than is presently the case and would result in harm to their living conditions. This would be particularly so when residents may wish to have windows open or when utilising rear garden space.
11. Given the proximity of neighbouring residential uses, it is considered that Condition 13 is both reasonable and necessary in restricting the extent and location of outdoor seating areas at the appeal site and would continue to serve a useful purpose in safeguarding the amenity of nearby residents.
12. The appellant makes the point that the proposed seating area would occupy an area of underused space as well as unifying the two permitted areas of outdoor seating. Yet, this would be at the expense of imposing harm upon the living conditions of neighbouring residential occupiers.

Number of tables and customers

13. The existing tearoom courtyard abuts the boundary wall with No 10 George Street and is close to its rear projecting wing that has two first floor windows overlooking the space.
14. Condition 16 limits the number of tables and customers in the courtyard and al fresco eating areas to 6 and 24 respectively. Removing this condition would enable more tables and customers to occupy these spaces, and if these were to exceed the current limitations and there was to be no limit on table/customer numbers this would inevitably cause more activity and talking that would intensify the volume of noise from these spaces. With neighbouring windows and gardens of those residential properties in close proximity, the increased noise would be intrusive, particularly when residents have windows open, perhaps during hot weather. This would have a harmful effect on the living conditions of neighbouring occupiers.
15. In the event that condition 16 was removed, it is acknowledged that instances when the number of people exceeding the current limitations could be infrequent. However, any ability to control numbers of customers and associated noise levels, for example from people chatting and crockery and

glasses clinking, would be lost. Therefore, the condition is necessary and reasonable at this sensitive location close to residential occupiers.

16. The appellant considers that condition 16 fails the test of enforceability. However, it is clear from the wording of the condition what the limits are on the number of tables and customers that can be seated in the two areas defined. These could be counted without difficulty to ensure compliance; therefore, I consider that the condition is enforceable.
17. I have not been presented with a technical noise assessment in the submitted evidence. Nevertheless, on the basis of the information before me I have been able to apply my own planning judgement in my assessment of the potential noise and disturbance arising from the proposal.

Hours of opening

18. Despite the appeal site's city centre location, neighbouring residential occupiers currently have an expectation that customer sound and activity from the café ceases around the current early evening closing time. Extending the opening hours from 18:00 to 21:00 from Thursday to Saturday, would encroach into the evening at a time when neighbouring residential occupiers would be settling down and relaxing. The close proximity of the café's permitted outdoor seating areas to windows and garden spaces of neighbouring dwellings along with the lack of any robust sound barriers or mitigation would result in a significant noise intrusion that would be harmful to neighbouring residents during a part of the day when they would be expecting a reduction in activity and sound emanating from the café use.
19. I have already indicated that there would be harm incurred on residential occupiers by the provision of the proposed additional outdoor seating area. This impact would be exacerbated were the proposed outdoor seating area also to be in use until 21:00 on the days proposed.
20. The proposed earlier opening time of 08:30 on Sundays and Bank Holidays would result in more activity and noise from the cafe being experienced by neighbouring residential occupiers at a time when they currently expect the café to be closed. Whilst I note that this earlier opening time would be similar to that currently operating from Monday to Saturday, it is reasonable to expect some days and particularly the early parts of the morning to be restricted, to allow neighbouring occupiers in close proximity, some quiet enjoyment, for example use of a private garden area, without the operation of the café use. Therefore, the proposed earlier opening hours during the days specified would be harmful to neighbouring living conditions.
21. The café's proximity to neighbouring residential occupiers requires careful control of the activity emanating from it, given that the use involves the consumption of food and drink in an external open-air setting. The control of opening hours is one of the means of ensuring those neighbouring living conditions are safeguarded. Consequently, condition 8 continues to be necessary and reasonable in this regard.

Conclusions on living conditions

22. I have found that extending, in each case, the opening hours and the area in which seating associated with the use is permitted would have a harmful effect on living conditions in terms of noise and disturbance. This would also be the

case if the current limit imposed on the numbers of tables and persons allowed were to be removed and become unrestricted.

23. The combined effect of relaxing conditions 8 and 13 and removing condition 16 in the terms proposed, would intensify the noise from the premises further and have a significantly harmful effect on adjacent residential occupiers. Therefore, the disputed conditions continue to serve a useful purpose and remain necessary and reasonable.
24. I conclude that varying conditions 8 and 13 and removing condition 16 would have an unacceptable effect on the living conditions of nearby residents, with particular regard to noise and disturbance. Therefore, the proposal would fail to accord with Policies 9 and 57 of the Local Plan. These seek, in part, to ensure that proposed uses do not adversely affect residential amenity or cause serious problems in terms of noise. Furthermore, these policies are broadly in line with the National Planning Policy Framework (the Framework), where it requires developments to create places with a high standard of amenity for existing and future occupiers (paragraph 127).

Conservation area

25. The SACA embraces a wide area focussed on the cathedral and historic centre of the city and derives its character from its history and the range of building styles. This contains the substantial grade I listed St Albans cathedral along with the expansive lawned areas and mature trees that surround it.
26. To the south of the appeal site and beyond its rear boundary wall is the cathedral. The St Albans Conservation Area Character Statement (SACACS) describes the “peaceful and reflective atmosphere” as one of the positive characteristics of this part of the SACA.
27. The significance of this part of the SACA is therefore derived from the historic medieval fabric of the George Street terrace, the striking presence of St Albans Cathedral and the sense of openness and tranquillity generated by the verdant and undeveloped grounds that surround it.
28. Condition 13 was imposed in part to safeguard the character of the cathedral precinct within the SACA. The proposed area for outdoor seating would result in further sound and activity emanating from the appeal site. Nevertheless, boundary walls and landscaping would occupy the intervening space between the appeal site and the cathedral grounds that would likely contribute to muffling the sound from the café. Moreover, the additional sound from the appeal site would not fundamentally add to the existing ambient noise environment experienced within the cathedral’s grounds given its proximity to the city centre and its associated activity. Therefore, Condition 13 would not be necessary or reasonable in this respect.
29. I consider that varying Condition 13, under the terms proposed, would preserve the character and appearance of the SACA and therefore have an acceptable effect on it. I therefore find no conflict with Policy 85 of the Local Plan, which among other things requires development to be sympathetic to its surroundings and to the conservation area as a whole. The proposal would also accord with the Framework’s objective of conserving heritage assets in accordance with their significance.

Other Matters

30. In terms of the impact on the setting of the Grade I listed cathedral, the expansive lawn areas and mature trees that surround it have a peaceful and reflective atmosphere that contributes considerably towards the cathedral's setting. The proposed outdoor seating area would be contained within the site and set away from the rear boundary with the cathedral. Although the proposed development would result in an increase in noise and disturbance that would be harmful at close quarters, the distance from the cathedral grounds and the presence of intervening boundary walls, shrubs and trees would ensure there would be no harm incurred on the setting of the listed cathedral.
31. Whilst I recognise the guidance in the Framework in respect of taking a positive approach to the growth, management and adaptation of town centres, this needs to be balanced with the Framework's requirement to ensure that developments create a high standard of amenity for existing and future users. In this regard the proposal's economic benefits are outweighed by the harm that would be incurred upon neighbouring nearby residential occupiers.
32. I have been referred to neighbouring food and drink establishments which have later closing times. By allowing the appeal and extending the opening hours, the cafe would be able to compete on an equal footing with these businesses. The appellant contends that a condition restricting the appeal premises to an earlier closing time would be unreasonable in light of the later hours of opening associated with other establishments. However, I have no specific details of the opening times of the establishments referred to, their proximity to residential dwellings and if they relate to areas of outdoor seating. Without knowing these details, I am unable to make a comparison and determine whether the appeal proposal would be consistent with other businesses that contribute to the city centre evening economy. Notwithstanding this, I have determined this appeal on its own individual merits.
33. The appellant refers to the principle of "buyer beware" applying to neighbouring occupiers who choose to move into neighbouring dwellings. Yet, it is also considered reasonable and a planning policy requirement to protect the living conditions of those occupiers.
34. The appellant considers that the terminology used by the Council in describing the impact does not in their view amount to harm. However, it is clear from the evidence that the Council's case rests on the detrimental impact noise conditions would have upon neighbouring residential occupiers, and it has not led to any misunderstanding in my determination of the appeal.
35. I note that the proposal was recommended for approval to the Planning Committee, but I have determined this appeal on its own merits and on the basis of my own observations. The officer's recommendation does not therefore sway my judgement that the proposal is unacceptable for the reasons I have given. Moreover, any issues of an alleged conflict of interest are between the main parties.

Planning Balance and Conclusion

36. Letters of support have been submitted in favour of the proposal, citing the modest increase in opening hours and the economic benefits to the business.

However, I found that increasing the opening hours into the evening would be harmful, whilst the economic benefits, although positive, would be outweighed by the proposal's harmful effects on the living conditions of neighbouring residential occupiers. Whilst I found that the proposal would incur no harm upon the SACA, this would be a neutral effect that neither weighs in favour or against the proposal.

37. Accordingly, varying conditions 8 and 13 and removing condition 16 is not supported. For the reasons set out above the appeal is dismissed.

R. E. Jones

INSPECTOR