



Appeal Decision

Site visit made on 29 September 2020

by Andrew Bremford BSc (Hons) MRICS

an Inspector appointed by the Secretary of State

Decision date: 21 October 2020

Appeal Ref: APP/D1780/W/20/3254263

5 Canute Road, Southampton SO14 3FH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Tamsin Stone of Mango Thai Tapas against the decision of Southampton City Council.
 - The application Ref 20/00268/FUL, dated 24 February 2020, was refused by notice dated 21 April 2020.
 - The development proposed is described as '*Retrospective Planning Consent for revised operational hours and use description different to that conditioned in application 05/00125/VC and 04/00985/FUL. The applicant seeks consent for the following hours:*
Monday 9am to 1.00am
Tuesday 9am to 1.00am
Wednesday 9am to 1.00am
Thursday 9am to 3.00am
Friday 9am to 3.00am
Saturday 9am to 3.00am
Sunday 11am to 1.00am
-with last entry one hour before the above and to include music (live/recorded), entertainment & dancing - alongside the sale of food and alcohol. Closure (staff) would be 30mins after trading'.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The description of development in the heading above has been taken from the planning application form. However, in Part E of the appeal form it is stated that the description of development has not changed but, nevertheless, a different wording has been entered. Neither of the main parties has provided written confirmation that a revised description of development has been agreed. Accordingly, I have used the one given on the original planning application form.
3. I note that the application has been submitted retrospectively. I have dealt with the appeal on that basis.
4. Although the planning application was for full planning permission, in Part F of the appeal form it is stated that the reason for the appeal is that the local planning authority has refused permission to vary or remove a condition(s). The description of development on the planning application form includes '*revised operational hours and use description different to that conditioned on*

application 05/00125/VC and 04/00985/FUL. I have been presented with a copy of the Council's approval notice for planning permission reference 05/00125/VC, but not a copy of the approval notice for planning permission reference 04/00985/FUL. Nevertheless, it is clear, taking into account the Council's approval notice reference 05/00125/VC, that the different use description referred to on the planning application form relates to what is described in condition 2 of that approval notice. It states that areas '*within the basement shall be used as a fully licensed area for the consumption of alcoholic drink and all other areas shall be used as a restaurant (A3) and the ground floor shall be used as a restaurant / delicatessen to be fully licensed for the consumption of alcoholic drinks (on and off the premises). No part of the premises shall be used as a public house, as a bar used primarily for the consumption of alcoholic drinks or as Leisure and Assembly Uses (Class D2) for entertainment, music and dancing uses*'. The description of development on the planning application form also states that the proposal is '*to include music (live/recorded), entertainment & dancing – alongside the sale of food and alcohol*'. So, taking into account the wording of condition 2 of approval notice reference 05/00125/VC and the description of development on the planning application form, I consider that the appeal proposal represents a material change in the permitted use of the premises. Thus, notwithstanding what is stated in Part F of the appeal form, I have dealt with the appeal on the basis that it is one made against a refusal of planning permission for development and not an appeal made under section 78 of the Town and Country Planning Act 1990 (the Act) against a refusal to grant planning permission under section 73A of the Act for development of land carried out without complying with conditions subject to which a previous planning permission was granted. In any event, this matter is not determinative to the outcome of the appeal.

5. In regard to the Council's second reason for refusal, since the appeal was lodged, the appellant has submitted a planning obligation by way of a Unilateral Undertaking (UU) dated 18 September 2020 pursuant to section 106 of the Act. I shall return to this matter later.

Main Issues

6. The main issue is the effect of the proposal on the living conditions of the occupiers of nearby and neighbouring residential properties with regard to noise, litter and disturbance.

Reasons

7. The appeal premises comprise the ground floor and basement level Mango restaurant located on the northern side of Canute Road. The area is characterised by a mix of commercial uses and residential properties and blocks of student housing. I saw at the time of my site visit tables and chairs and a bar at ground floor level. At basement level, which is significantly larger than the ground floor level, I saw a bar, tables, chairs, and what appeared to be an area for dancing and an area set aside for a DJ to play music.
8. The proposal seeks permission to enable music (live/recorded), entertainment and dancing, alongside the sale of food and alcohol, within the opening hours set out in the banner heading above. Although the opening hours currently permitted¹ are 08:00 to 00:30 Monday to Sunday, the appellant states that the

¹ Planning approval reference: 05/00125/VC

present trading hours (until 03:00 on some days) and nature of the operation at Mango has for some years now been more akin to a nightclub rather than a restaurant. Thus, it is clear that the operation at Mango is heavily focussed on the night time economy.

9. 'Saved' Policy SDP 1 of the City of Southampton Local Plan Review – Adopted Version Second Revision (2015) (LPR) states, amongst other things, that planning permission will only be granted for development which does not unacceptably affect the health, safety and amenity of the city and its citizens. 'Saved' Policy SDP 16 of the LPR states, amongst other things, that proposals for noise generating development will not be permitted if it would cause an unacceptable level of noise impact.
10. The appeal site is not located within any of the 'evening zones' or 'late night hubs' as shown on Map 6 of the Southampton City Council City Centre Action Plan, adopted 2015 (CCAP). Policy AP 8 of the CCAP makes clear that new uses with extended opening hours (beyond 23:00) will be directed to the designated zones and hubs in order to minimise potential disturbance to nearby residential areas. Elsewhere in the city centre, outside of these designated zones and hubs, proposals for extended opening hours will only be permitted where they would not cause late night noise and disturbance to residents.
11. Although appellant states that the premises have undergone a major internal refurbishment with additional sound insulating ceilings in 2012 and further works carried out to reduce sound transmission in 2018, there is some, albeit limited, evidence that sound audible from the entertainment can be heard from within neighbouring property. However, the Council's Environmental Health officer states that there have been no noise complaints for around 2 years. Furthermore, the Council is satisfied that the noise transfer from the premises itself in regard to the activities associated with its use can be adequately controlled so as not to adversely affect nearby noise sensitive residential uses. I see no reason to disagree and am therefore satisfied that a scheme for controlling noise from within the premises could be the subject of a planning condition in the interests of protecting the living conditions of the occupiers of neighbouring residential properties. In this regard, the proposal would accord with 'saved' Policy REI 7 of the LPR. It states, amongst other things, that proposals involving food and drink uses will be permitted provided that any adverse impact on the amenities of neighbouring residential premises by reason of noise within the premises can be prevented by the installation of sound attenuation measures by appropriate conditions.
12. I do not doubt that Mango have all the appropriate licences to operate at the premises. Furthermore, I do not doubt that Mango, who also operate from other premises in the city, have a history of being recognised as a good operator and have close relationships with Hampshire Police and the Council's Environmental Health department. However, limited weight is attached to the current management of the premises by the existing operator given that the proposal, if granted planning permission, could very easily in the future be operated by a less socially responsible operator. Indeed, I note that the appellant confirms that the premises has had numerous operators since its conversion to a licensed restaurant in 2004. Moreover, historically (with former operators) numerous incidents of noise from patrons exiting the premises led to police and Environmental Health involvement. Notwithstanding any other licensing controls, I cannot, therefore, be certain that future

operators would be as good an operator as the evidence indicates Mango have been in recent years in controlling late night noise and disturbance outside the premises, which the evidence indicates has historically been a problem.

13. The appellant points out that most patrons of Mango are in the 35-55 age bracket and as the appeal site is not located within the main night time economy hub patrons are less likely to be aged under 35. However, I have not been presented with any compelling evidence that future operators of the premises would not choose to run a business that appeals predominantly to a younger age group. Moreover, the evidence indicates that the premises has a capacity of 220 patrons. Taking these factors into account, in combination with the fact that I cannot be certain that future operators of the premises would be as socially responsible as Mango and the location of the site outside an evening zone or a late night hub, there is potential for noise and disturbance to arise from the comings and goings of patrons.
14. This would result from patrons not only leaving the premises on foot very late into the evening and potentially well into the early hours of the morning, but also from patrons arriving on foot at similar times given that the evidence indicates that the last entry to the premises is at 02:00 on days when it remains open until 03:00 in the morning. The appellant contends that most patrons that require a taxi when they leave the premises order an Uber which has the benefit of timing the exit from the premises to within seconds of collection. However, limited weight is attached to this as a mitigating factor taking into account that it cannot be relied upon that every patron would take up this option. Indeed, I note that the appellant also says that patrons looking for a taxi presently walk to the rank at Oxford Street.
15. The appeal site is in an area of the city outside of the designated evening zones and late night hubs. So, it is not located where business premises are generally open late at night or into the early hours of the morning. Furthermore, the evidence indicates that it is not located within that part of the city well serviced with taxi ranks or late-night bus services. In this context, noise and disturbance caused by patrons arriving and leaving the premises, through the local streets, would be very noticeable at times when the occupiers of nearby and neighbouring residential properties are expecting peace and quiet to sleep.
16. The Council's refusal notice also refers to the impact of the proposal on the amenities of nearby and neighbouring residential properties by reason of litter. I acknowledge that litter is understandably a concern. However, I have not been presented with any substantive evidence of an existing litter problem directly resultant from the use of the premises or that patrons, even if they were of a younger age group, arriving and leaving the premises late at night or in the early hours of the morning would have an adverse impact on the living conditions of the occupiers of nearby and neighbouring residential properties through the discarding of litter. Therefore, in this regard, I find that the proposal would not conflict with the living conditions aims of 'saved' Policies SDP 1 and REI 7 of the LPR.
17. However, for the above reasons, I conclude that the proposal would have a significant detrimental impact on the living conditions of the occupiers of nearby and neighbouring residential properties in regards to noise and disturbance.

18. Consequently, in this regard, the proposal would not accord with 'saved' Policies SDP 1, SDP 16 and REI 7 of the LPR and Policy AP 8 of the CCAP which, collectively, amongst other things, seek to ensure that development with extended opening hours (beyond 23:00) is directed to the designated zones and hubs in order to minimise potential disturbance to nearby residential areas; and does not have an adverse impact on the amenities of the citizens of the city by reason of noise and disturbance.

Other Matter

19. The Council's second reason for refusal concerned the absence of a legal agreement to secure late night community safety and CCTV contributions. That was required to address the wider implications of late night uses within the city centre. The Council advise that they no longer wish to seek a financial contribution towards CCTV. The appellant accepts the need for a legal agreement in regard to late night community safety and has submitted a completed UU during the appeal. The Council has provided comments regarding the submitted UU and has raised concerns about the document itself. Therefore, there is dispute between the parties about the content of the UU. However, as I am dismissing the appeal on other substantive grounds, there is no requirement for me to reach a finding on the submitted planning obligation, as it would not affect the outcome of the appeal.

Conclusion

20. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Andrew Bremford

INSPECTOR