



Appeal Decision

Site Visit made on 25 May 2021

by Paul Thompson DipTRP MAUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 JUNE 2021

Appeal Ref: APP/V2004/W/21/3270475

140 George Street, Kingston-Upon-Hull HU1 3AA

- 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 Ben Fisher (Hull Night Life Ltd) against the decision of Kingston-Upon-Hull City Council.
 - The application Ref 20/01515/S73, dated 7 December 2020, was refused by notice dated 1 February 2021.
 - The application sought planning permission for Change of use from A3 to A4 without complying with a condition attached to planning permission Ref 17/01676/FULL, dated 7 February 2018.
 - The condition in dispute is No 4 which states that: Customers shall only be permitted onto the premises between: 1100 and 2300 hours on Sundays, 0900 and 2330 hours on Mondays to Thursdays; 0900 on Fridays to 0030 hours on Saturdays; and 0900 hours on Saturdays to 0030 hours on Sundays.
 - The reasons given for the condition is: In the interests of residential amenity and to comply with policies 9, 12 and 49 of the Local Plan.
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Decision

1. The appeal is allowed and planning permission is granted for Change of use from E(b) to Sui Generis (drinking establishment) at 140 George Street, Kingston-Upon-Hull HU1 3AA in accordance with the application Ref 20/01515/S73 dated 7 December 2020, without compliance with condition number 4 previously imposed on planning permission Ref 17/01676/FULL dated 7 February 2018 and subject to the following conditions:
 1. The development hereby permitted shall be carried out in accordance with the following approved plans: 3/1160/3-18.
 2. No development shall take place until a flood warning and evacuation plan and details of flood proofing measures have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be implemented in accordance with the approved details or particulars.
 3. Customers shall only be permitted on the premises between the following hours:

0900 – 0230 Mondays - Saturdays (including into Sunday mornings); and
1100 Sundays – 0230 Monday mornings.

Procedural Matters

2. As at 1 September 2020, Classes A3 and A4 of the Town and Country Planning (Use Classes) Order 1987 (as amended) were revoked, Class A3 was replaced with Class E(b) and Class A4, which included drinking establishments such as the appeal building, became defined as 'Sui Generis'. As the subject application was submitted after the aforementioned date and this appeal decision creates a new permission, I am not able to utilise the same use classes as on the original planning permission. I have therefore amended the description of development to reflect the current use classes and, given that Sui Generis is not specific, the use of the appeal building for which permission was originally sought is also included. As uses of land and buildings automatically fell into the new use classes late last year, I am satisfied that the main parties would not be inconvenienced by these matters. The development proposed is therefore for 'Change of use from E(b) to Sui Generis (drinking establishment)' and I have dealt with the appeal on this basis.

Main Issue

3. The main issue is the effect that varying the opening hours of the appeal premises would have on the living conditions of neighbouring residential occupiers.

Reasons

4. The appeal concerns a bar situated beneath the George Street multi-storey carpark, at the corner of George Street and Wilberforce Drive. The subject planning condition currently restricts the operation of the premises to specific hours on different days of the week in order to protect the living conditions of neighbouring residential occupiers, particularly during the early hours of the morning and on Sundays. The appellants wish to extend the existing opening hours to 0230 daily.
5. I accept that the site is not situated within a part of the City Centre where it is likely that background noise will be greater and, as a general principle, during the early hours of the morning the potential for disturbance is more likely, as activity tends to be more noticeable.
6. That being said, I am mindful that there are other entertainment and drinking establishments near to the appeal premises, including a casino to the east in Freetown Way, and a further casino and gentlemen's club to the west in Dock Street. The environment surrounding the site does not therefore strike me as being so discreet that it would be vulnerable to change. All three of the premises referred to have closer relationships, than the appeal premises do, either with in situ or consented residential properties. In particular, there are apartments between the two premises on Dock Street, including at street level. The aforementioned premises are also able to open beyond 0230 further into the early hours of the morning, which the Council has not disputed in its evidence. I am also not aware of any complaints having been received by the Council in relation to the existing operation of the appeal premises.
7. I acknowledge that there may be some noise and disturbance caused by patrons coming and going from the appeal premises during the proposed extended opening hours, including walking to and from taxi ranks and other drinking establishments. However, there is insufficient substantive evidence

before me to demonstrate that this would be likely to be any more harmful to the living conditions of residents in the locality than that which is to be expected from patrons of other licensed premises nearby.

8. The Council is concerned that noise and disturbance could also increase from music or other activities associated with the extended operations at the appeal premises. Were the Council so concerned that such matters could be harmful, then these should have been controlled by further planning conditions on the original permission. In any event, in my experience, these are matters that are often appropriately dealt with through the controls that can be imposed through premises licensing, which the Council has at its disposal.
9. The Council has highlighted its aim to encourage more residential development in George Street, and that more residential and commercial development has been accommodated there over time. However, the National Planning Policy Framework seeks to ensure that existing businesses should not have unreasonable restrictions placed on them due to development permitted after they were established. Any future development would therefore need to be in the knowledge that existing businesses operate in the night-time economy.
10. A condition restricting the hours of operation of the appeal premises remains relevant and necessary to protect the living conditions of neighbouring residential occupiers. Nevertheless, for the above reasons, I conclude that varying the opening hours of the appeal premises to enable the premises to be open to 0230hrs daily would not have an unacceptably harmful effect on the living conditions of those neighbouring residential occupiers. Hence, the proposed hours of operation would accord with the aims in respect of noise pollution, as expressed in Policy 49 of the Hull Local Plan 2016 to 2032.

Conditions

11. The guidance in the Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should restate the conditions imposed on earlier permissions that continue to have effect. As I have no information before me about the status of the conditions imposed on the original permission, I shall impose all those that I consider remain relevant.
12. Given that the original development has been started and is the same as that for which I would be granting permission, it is not necessary to impose a time limit condition. In the interests of clarity, particularly in respect of the extent of the appeal premises, I have specified the approved plans. A condition relating to a flood evacuation plan is required to reduce the risk of flooding to the proposed development and future occupants and to ensure safe access and egress to and from site. In the event that this has in fact been discharged, that is a matter which can be addressed by the parties. Finally, I have amended the operating hours condition to include the revised closing time discussed above.

Conclusion

13. For the reasons given above, I conclude that the appeal should succeed.

Paul Thompson

INSPECTOR