



# Appeal Decision

Site Visit made on 26 July 2021

**by Lucy Wilson BA (Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 17 August 2021**

## **Appeal Ref: APP/A0665/W/21/3270153**

### **1 - 3 Eastgate Row North, Eastgate Street, Chester CH1 1LQ**

- 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 Calum Adams, Plant Based Dining Limited, against the decision of Cheshire West and Chester Council.
- The application Ref 20/03487/S73, dated 25 September 2020, was refused by notice dated 2 March 2021.
- The application sought planning permission for Erection of screens to form alfresco dining area at row level fronting 1-3 Eastgate Row without complying with conditions attached to planning permission Ref 02/01034/COU, dated 16 December 2002.
- The conditions in dispute are Nos 2, 4 and 5 which states that:
  - 2. The use hereby approved shall only be undertaken between the hours of 09.00 and 22.00.
  - 4. Details of the numbers and layout of tables, chairs, parasols and any other features that are to be positioned within the site shall be submitted to and approved in writing by the local planning authority prior to development commencing. Development shall be carried out in complete accordance with the approved details.
  - 5. The tables and chairs to be used in this proposal shall be of the same colour and specification as shown in the approved photograph dated 14.10.02.
- The reasons given for the conditions are:
  - 2. In order to comply with the basis of the agreed policy for outdoor cafes, and in the interests of amenity.
  - 4. For the avoidance of doubt and in order to ensure an appropriate standard of development within the designated Chester City Conservation Area.
  - 5. For the avoidance of doubt and in order to ensure an appropriate standard of development within the designated Chester City Conservation Area.

## **Decision**

1. The appeal is dismissed.

## **Preliminary Matters**

2. Since the application was determined, a revised version of the National Planning Policy Framework (the 'Framework') has been published. The main parties were given the opportunity to comment on any relevant implications for the appeal and have not therefore been prejudiced. The main parties did not have any comments on this matter.

## **Background and Main Issue**

3. The appeal site forms part of the Eastgate Row Stall. Planning permission was granted in 2002 for the stall to be used as an al fresco area<sup>1</sup>. In June 2020, the

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<sup>1</sup> 02/01034/COU

Council granted planning permission to vary condition 4 and remove condition 5 of the original application to allow the layout and design of the seating area to be changed<sup>2</sup>.

4. This appeal seeks to vary conditions 2 and 4 and remove condition 5 of the original application. I have no reason to disagree with the Council's previous view regarding conditions 4 and 5 and therefore my decision only deals with condition 2.
5. The main issue is the effect of varying condition 2 upon the living conditions of the occupiers of nearby residential properties, with particular regard to noise and disturbance.

### **Reasons**

6. Condition 2 allows the al fresco dining area to operate between 09.00 - 22.00. The appellant seeks to alter the hours of the al fresco area to 09.00 – 00.00 seven days a week.
7. The appeal site is situated within Chester city centre and forms part of the Eastgate Row Stall. The stall is open sided and is located at the corner of Eastgate Street and Northgate Street.
8. Based on the evidence before me, the nearest residential units, to the appeal site, are located on Watergate Street. These units are in relatively close proximity to the appeal site.
9. The appellant states that there are other venues, within the city, that have outside spaces used beyond midnight. However, they have not provided any details as to where these venues are located and their proximity to residential units.
10. No evidence has been submitted to show that there are other premises on Eastgate Row Stall or nearby with permitted al fresco use beyond 23.00. It is also not clear whether those premises which can open until 23.00, are permitted to do so seven days a week. I understand that similar premises on Watergate Street have been required to provide lobby door entrances to prevent noise issues and disturbing residents. Furthermore, there are similar premises on Northgate Street which have planning conditions that require the al fresco areas to cease by 22.00.
11. I accept that the nearby residents would expect a certain degree of noise and activity due to the city centre location and there would be existing noise from other sources. However, the proposed additional hours, seven days a week, would be at a time when occupiers of the nearby residential units would reasonably expect a degree of peace and quiet when they would wish to sleep.
12. The appellant highlights that: they are not an establishment which produces loud music, have never had a noise complaint, they are restaurant led and the terrace holds 26-30 people so does not create hustle and bustle. They assert that extending the hours would give more space to serve food and drink to customers. Additionally, opening later would improve customers dining experience as currently they have to ask them to move indoors or leave if there is not enough space inside.

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<sup>2</sup> 20/00168/S73

13. The appellant also sets out that they would maintain a respectable venue and outline how they would ensure public safety, prevent crime and prevent public nuisance. They would do this through a range of measures including ensuring the music would not be too loud, not promote excessive drinking, food available throughout trading hours, maintain table service, use registered door supervisors, CCTV and train staff.
14. However, I am unable to attach an enforceable condition to ensure that these measures are met. Based on the evidence submitted, I am not satisfied that the likely impact could be mitigated through the imposition of a condition. Therefore, I do not consider that the measures highlighted by the appellant would truly manage or mitigate potential noise and disturbance.
15. Consequently, given the nearby residential units, the exposed nature of the area, potential noise and disturbance seven days a week and limited similar al fresco operating hours in the vicinity of the appeal site, the sought operating hours are likely to result in additional noise and disturbance which would adversely harm the living conditions of the occupiers of nearby residential units.
16. The Council state that they would be willing to accept permission for the use of the area between the hours of 22.00 to 23.00 hours for a temporary period of one year. However, this is not what the appellant has applied for. In any event, I am not satisfied on the evidence provided that such a condition would not harm the living conditions of nearby residents.
17. Accordingly, based on the evidence submitted, condition 2 is reasonable and necessary in its current form to protect the living conditions of the occupiers of nearby residential properties, with particular regard to noise and disturbance. The proposal would therefore conflict with Policy SOC 5 of the Cheshire West and Chester Council Local Plan (Part One): Strategic Policies (2015) and Policy DM 2 of the Cheshire West and Chester Council Local Plan (Part Two): Land Allocations and Detailed Policies. These collectively seek, amongst other matters, to safeguard the quality of life for residents living nearby.

### **Other Matters**

18. The appellant highlights that the proposal would help to rejuvenate The Rows, add to the healthy city centre night life, and would help to develop the cultural development of the city with later eating in a modern concept. While I have little evidence to substantiate these claims, in any event, these matters do not outweigh the harm identified above.
19. I also note that the proprietor of a nearby business highlights that the extended hours would benefit businesses. They consider that The Rows suffers from low visibility and the proposal would increase awareness of their business. In addition, the business and their owners have been respectful, helpful and friendly. There is no substantive evidence to demonstrate that nearby businesses are struggling and the extended operating hours would truly benefit businesses. The matters raised by the business proprietor do not outweigh the harm identified.
20. I understand that the appeal site is located within the City Centre Conservation Area (CA). I am satisfied that the amended hours would have a neutral impact upon the character and appearance of the CA and would not cause harm to the

significance of the designated heritage asset. However, this is a neutral consideration and does not weigh in favour of the appeal.

**Conclusion**

21. The proposal would therefore conflict with the development plan as a whole and there are no other considerations that outweigh this conflict.
22. For the reasons given above the appeal should be dismissed.

*L M Wilson*

INSPECTOR