



Appeal Decision

Site visit made on 3 May 2022

by R Hitchcock BSc(Hons) DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 May 2022

Appeal Ref: APP/W4325/W/22/3291212

Lucas Smith, 122 Allport Road, Wirral CH62 6AQ

- 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 Mr Graham Hardcastle against the decision of Wirral Metropolitan Borough Council.
 - The application Ref APP/21/01998, dated 10 November 2021, was refused by notice dated 10 January 2022.
 - The development proposed is 'No development works this application was for a change of use' (sic).
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Decision

1. The appeal is allowed and planning permission is granted for a change of use from a bakery to drinking establishment at 122 Allport Road, Wirral CH62 6AQ in accordance with the terms of application Ref APP/21/01998, dated 10 November 2021, subject to the conditions set out in a Schedule attached to this Decision.

Preliminary Matters

2. The description in the banner heading above is taken from the planning application and appeal forms. I have used the description appearing on the Council's Decision Notice in my decision as a more precise description. It does not change the development for which planning permission was sought.

Main Issue

3. The main issue is the effect of the proposed development on the living conditions of nearby residents with particular regard to noise and disturbance.

Reasons

4. The site lies within a parade of shops set behind a dedicated access road and parking area to the side of Allport Road, a busy east-west route in the locality. The split row includes a number of rear-serviced retail units, takeaways, cafés and other businesses. Residential flats are present above the units and residential properties border the eastern parade on 3 sides.
5. The proposal seeks to introduce a drinking establishment described by the appellant as a micro pub serving a niche market. The facility would accommodate up to about 40 patrons at any one time. The proposed opening hours would vary from 1200-1700hrs with closing times of between 2100-2300hrs progressing longer and later throughout the week, culminating on Saturdays.

6. Amongst other things, saved Policies SH4 and HS15 of the Wirral Unitary Development Plan [2000] (the UDP) seek to protect the living conditions of nearby residential occupiers from the potential adverse effects of new uses within shopping parades located in primarily residential areas. For proposed drinking establishments, the policies are augmented by advice in the Council's adopted SPD3 – 'Hot Food Takeaways, Restaurants, Cafes and Drinking Establishments' Supplementary Planning Document (the SPD), which supports small scale facilities subject to a number of considerations.
7. Although not a statement of policy, the SPD advocates that regard be had to the number and proximity of other evening time uses, the nature of the locality in terms of function and nearby uses, the area's vitality, the benefits of proposed use and any unresolved effects of existing uses.
8. At the time of my site visit, albeit a snapshot in time, the area was bustling with users of the various businesses creating a moderate level of activity of people arriving and departing after visits. Alongside the traffic flows on the busy road, the area about the shops and nearby junction was observed to be lively compared to the surrounding residential streets. I saw that the majority of the units were occupied and included a range of uses crossing over from daytime to evening time opening.
9. There are currently no other drinking establishments in the row, or on the adjacent parade beyond Dawpool Drive. The Merebrook public house lies to the west of the parades but is located in detached grounds beyond the junction with Greenfields Avenue. As such, the site would be isolated from other similar bars.
10. The use of the site as a micro-pub, or other drinking establishment, would have the potential to create noise and activity within and about the site. This would be during later afternoon and evening times. In terms of noise, this would have a propensity to increase throughout the window of opening on any particular day, and most likely during the traditionally busier days of Fridays and Saturdays.
11. Noise and disturbance from raised voices within and about the building, and vehicle noises associated with people relying on taxis or lifts would potentially arise. To protect local living conditions, the SPD seeks a minimum distance of 40m between drinking establishments and buildings which are in solely residential use. According to the Council, the unit lies between 35-40m from the nearest houses which are located on the opposite side of Allport Road. This would result in a minor conflict with the guideline.
12. Levels of traffic on the main carriageway would tail off later into the evening such that base noise levels would usually be lower than during the daytime. However, I have little doubt that a background level of activity will persist about the parades on account of the long opening times of the general stores and the handover from services operating during traditional shop opening times to food and other outlets open into the late evening.
13. In the context of the draw of the existing businesses and the scale of the unit, the noise associated with vehicle movements generated by the site would unlikely be discernible from traffic noise on and about the main road. The frequency of movements would be limited and comparable or lower than the nearby larger Co-op store such that it would be unlikely to give rise to a

- notable increase in traffic movements in the locality, particularly for occupiers of the dwellings opposite.
14. The nature of the use is such that noise from patrons within the building could be transmitted through the fabric of the building to adjacent premises. During evening times, when background noise would be generally lower, any such noise would potentially disturb connected occupiers at times when they might be seeking to unwind or rest.
 15. Whilst recognising that residents living above commercial facilities serving public visitors will anticipate experiencing a degree of external noise which might be greater than in exclusively residential areas, noise transmitted through the building would have a high potential to cause disturbance. However, as previous decisions¹ referred to by the main parties have demonstrated, such transmission is capable of being mitigated through the installation of suitable noise insulation measures. Pursuant to the advice of the Council's Environmental Protection consultants, I find a requirement for their incorporation into the unit would suitably address this concern.
 16. To prevent sound outbreak as a consequence of the main entrance being open, a self-closing mechanism to the door could similarly be secured through a planning condition to minimise any outbreak effects from the frontage.
 17. Externally, the scale of the unit and proposed opening times would limit the potential for noise nuisance arising from activities outside of the building. Evening time opening during the majority of the week would not be at unsociable times in the context of the existing nearby businesses. The anticipated level of patronage and restricted number of other drinking establishments in the locality would mean that the frequency of comings and goings, or use by large groups, would be less likely to occur compared to larger-scale venues or where bars are clustered together.
 18. Although later times are proposed on Fridays and Saturdays, a requirement to exclude customers by 2300hrs (before the nearest pub beyond the junction of Greenfields Avenue), and limit the times of external waste management, would curb excessive noise late in the evening. On those days, when activity about vibrant centres has a propensity to intensify and extend to later times, I find the proposal would be commensurate in its scale and operation to the local centre characteristics. Accordingly, any effects from increased noise levels associated with the use of the unit would be minimal and the adjacent occupiers, or those across the main road, would not be unduly affected.
 19. I recognise that there would be some interaction with other outlets in the parade which remain open late into the evening. However, there is little before me to suggest that there are ongoing concerns or outstanding problems associated with existing businesses in the locality, or that cumulative effects between the existing pub or the late opening of some takeaways has resulted in reports of antisocial behaviour in the locality.
 20. Furthermore, given the scale of the unit and variations in closing times between both the proposal and the various nearby businesses, I consider that any cumulative associations are unlikely to result in significant concentrations

¹ APP/W4325/A/13/2199815 & APP/18/00099

of activity that would lead to regular incidents of excessive noise or disturbance at unsociable times.

21. For the above reasons, I find that the comparatively intimate scale of the unit, taken with the limited opening times and against the activity within and about the parades, would avoid undue noise and disturbance to nearby residential occupiers. It would align with the requirements of Policies SH4 and HS15 of the UDP, the SPD and the Framework as they seek to protect the living conditions of nearby residents from individual or cumulative effects of noise and disturbance and create places with a high standard of amenity for existing and future users.

Conditions

22. I have considered the suggested conditions from the Council and had regard to Paragraph 56 of the Framework and the National Planning Practice Guidance in terms of the use of planning conditions. In addition to the standard condition limiting the lifespan of the planning permission, I have imposed a condition specifying the relevant drawings as this provides certainty.
23. To protect the living conditions of nearby residents, restrictions to prevent excessive sound transmission from the premises and on opening and servicing times are reasonable and necessary.

Conclusion

24. For the reasons given I conclude that the appeal should succeed.

R Hitchcock

INSPECTOR

Schedule of Conditions to Planning Permission Ref APP/21/01998

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location plan TQRQM21313072451632, Site plan TQRQM21313072642507 and proposed floor plan showing internal layout.
- 3) The use hereby permitted shall not commence until noise insulation between the ground floor and the first floor residential accommodation has been installed in accordance with details previously submitted to, and approved in writing by, the Local Planning Authority; and such insulation shall be retained at all times thereafter.
- 4) The premises shall not be open to customers until the front entrance door has been fitted with a self-closing mechanism. The mechanism shall be operational for the duration of the approved use.
- 5) The premises shall only be open for customers between the following hours: 1700-2100 Mondays – Tuesdays, 1500-2200 Wednesdays-Thursdays, 1500-2300 Fridays, 1400-2300 Saturdays, 1200-2100 Sundays and 1200-2200 on bank holidays.
- 6) No deliveries shall be taken at, or despatched from, the site outside the hours of 0900 to 2000.
- 7) No disposal of refuse outside of the premises shall take place outside the hours of 0900 and 2000.

END.