



Appeal Decision

Site visit made on 14 June 2022

by R E Jones BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 July 2022

Appeal Ref: APP/D1780/W/22/3290972

35 London Road, Southampton SO15 2AD

- 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 Nightlife Clubs Ltd against the decision of Southampton City Council.
 - The application Ref 21/01139/FUL, dated 28 July 2021, was refused by notice dated 15 October 2021.
 - The development proposed is change of use of basement nightclub (sui generis use) and part of ground floor cafe/restaurant to Gentleman's Club (sui generis use) including extended hours of operation to Sunday - Thursday, 21:00 - 05:00 and Friday and Saturday 18:00 - 05:00.
-

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect of the proposal on the living conditions of occupiers of nearby residential properties, with particular reference to noise and disturbance.

Reasons

3. The appeal site is located within the Bedford Place/London Road district of the city centre, a well-established vibrant night-time economy area. There are a high concentration of bars, nightclubs and restaurants in the locality, while residential properties exist on upper floors and along streets immediately surrounding the district. Those residential streets closest to the appeal site include, Bellevue Road, Carlton Crescent and Kings Park Road, all of which are a short walk away.
4. The appeal building has operated as a nightclub (sui generis), and recently planning permission¹ was issued to change its use to a Gendelman's Club (sui generis). This approved an operating time up to 02.00am, and whilst this did not accord with the closing time prescribed in Policy AP8, the later opening time was considered reasonable considering the fallback position established by the nightclub's operating hours. A separate entertainment licence² has been issued by the Council for the premises to operate until 05.00am. This takes effect for 1 year until 26th August 2022.

¹ 20/00367/FUL, granted planning permission 7th October 2020

² Sex Establishment Licence Ref Number 2021/02513/19SEXEX

5. Policy AP8 of the Southampton City Council, City Centre Action Plan – Adopted Version March 2015 (CCAP) sets out that proposals for extended opening hours will be subject to restricted opening times as set out within Table 5. It states that the latest opening time in this location should be restricted with planning conditions to midnight, to reflect the proximity to nearby residential areas. This is in order to restrict the potential nuisance caused by the night-time uses.
6. Furthermore, it is clear from paragraph 4.76 of the CCAP that Bedford Place/London Road is an area already suffering due to the concentration of licenced premises and activities. It sets out that longer opening hours are unlikely to be permitted unless it can be demonstrated that the changes will not have an adverse impact on the area.
7. In terms of the late night uses the policy aims to control, it is noted that gentleman's clubs are not referred to. Nonetheless, the appeal proposal would be an entertainment venue where alcoholic drinks can be consumed on site. In this regard it would be broadly similar in character to other late night uses which the policy seeks to control. Accordingly, the provisions of Policy AP8 are relevant, and I have assessed the appeal having regard to these.
8. The appellant has sought to demonstrate that there would be no adverse impact from the extended opening hours until 05.00am. The previous nightclub use, with a capacity of 400 patrons would be relinquished. The Gentleman's Club would have a much-reduced capacity of 120 customers, while management policies seek to gradually restrict admissions to the premises from 100 patrons at 02.00am to 10-20 patrons by 05.00am (closing time). Further proposals to reduce the intensity of the number of patrons leaving the premises and dispersing into surrounding streets include a bespoke taxi service.
9. These management procedures would contrast markedly with the previous nightclub use and help manage the volume of patrons entering and leaving the premises. However, the appellant can have little control over behaviour further afield.
10. Groups of patrons arriving and leaving the club by foot, during the hours after 02.00am and dispersing through the surrounding residential streets would likely be in high spirits, particularly following the consumption of alcohol. In this context, instances of raised voices or shouting caused by patrons arriving and leaving the premises would be very noticeable at times when the occupiers of nearby residential properties are expecting peace and quiet to sleep. Consequently, the proposal would result in greater disturbance to the living conditions of neighbouring residential uses than the existing opening hours would. This would be particularly harmful during warmer nights when residential properties would be more likely to have their windows open.
11. The personal taxi service proposed by the appellant would allow patrons to leave the premises quietly. Similarly other cab services such as Uber would allow pick-ups from the premises to be timed to coincide with a pre-arranged departure time. I acknowledge that these services would reduce the incidences of patrons filtering into the adjacent residential streets. However, not every patron would use these services, as some may choose to walk home, purchase food nearby or source a taxi from elsewhere in the city centre. Therefore, I attach limited weight to the proposed management procedures as a means of curbing the harmful effects emanating from the proposed opening hours.

12. The appellant highlights that a separate licence has already been obtained to operate the gentleman's club until 05.00am. The Council's statement of case suggests that the assessment criteria for a licence differs and is focused more on the running of the premises rather than the wider effects on amenity. That said I note that the Council's Licencing Manager indicates that his consideration of the licence application, included impacts on nearby residents. Likewise, the appellant indicates that the Police, the Council's Environmental Health team, ward member and some local residents have raised no objection to the proposed opening hours.
13. Notwithstanding those different positions in addition to the case law referred to by the appellant³, I have not been referred to the level of assessment that was carried out in issuing the licence. For example, did those other consultees and the Licencing Committee carry out a site visit of the outlying residential streets and whether consideration was specifically given to the requirements of Policy AP8. Given this lack of detail I am unable to give any significant weight to the extant licence and those other representations that found in favour of the application.
14. The appellant refers to other establishments in the vicinity, already operating late opening times, well beyond the time specified in Policy AP8, highlighting a failure of the policy. Moreover, the appeal site itself has historically operated as a nightclub until 02.00am. Yet I have no specific details on whether most of those uses (and associated operating hours) received planning consent or whether Policy AP8 applied at the time. Moreover, there is no clear evidence, notwithstanding the examples where there is a fallback, that demonstrates any deviation by the Council from the policy approach set out within the development plan. The appeal decisions⁴ referred to also demonstrate that the Council have been consistent in defending Policy AP8's intentions.
15. The presence of late night uses close to the appeal site is accepted but they are also highlighted as key contributors on the issues of noise, disturbance and anti-social behaviour that have led to the approach described in Policy AP8. Allowing later opening hours at the appeal premises would intensify the number of people on the streets at unsociable hours. It is, therefore, sensible to consider the cumulative impact of concentrated night-time uses and the impacts of further intensification.
16. The appellant refers to a larger Gentleman's Club it operates in Cardiff and provides figures which demonstrate that its attendance by patrons reduced significantly as the 04.00am closing time approached. Whilst those numbers are low, even smaller groups or individuals leaving the appeal premises, could display exuberant behaviour that would unacceptably disturb nearby residential occupiers. I therefore give limited weight to that case.
17. I conclude, on the basis of the above reasons, that the proposal would have a significant detrimental effect on the living conditions of occupiers of nearby residential properties, with particular reference to noise and disturbance. Consequently, the proposal would not accord with 'saved' Policies SDP1, SDP16 and REI7 of the City of Southampton Local Plan Review (amended 2015) and Policy AP8 of the CCAP which, collectively, amongst other things, seek to

³ Applying Related Statutory Regimes in Planning Decision Making, Appendix 1, Appellant Statement of Case.

⁴ APP/D1780/W/19/3236020 (21 Lower Banister Street); APP/D1780/W/15/3003515 (25 London Road); APP/D1780/A/14/2228297 (3 Winchester Street) and APP/D1780/W/20/3254263 (5 Canute Road)

ensure that development with extended opening hours into the early hours is directed to the designated late night hubs in order to minimise 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.

18. Although Policy REI7 refers to food and drink establishments exclusively within Use Classes A3, A4 and A5, the appeal premises would encompass the character of those uses insofar as being an entertainment establishment where alcoholic drinks could be consumed. I have therefore referred to this policy in my conclusion on the main issue.

Other Matters

19. The proposal would, provide an economic boost to the local area through additional employment and attracting people to the locality. However, those new jobs and the additional spending could still be generated up until the current opening hours at the premises, and a significant increase in local employment and trade, over and above the current situation, is unlikely. Accordingly, this matter attracts only minor weight and would not overcome the significant harm I have identified.

Conclusion

20. For the reasons given above, the proposal conflicts with the development plan and there are no material considerations that outweigh that conflict. Therefore, the appeal is dismissed.

RE Jones

INSPECTOR