



Appeal Decision

Site visit made on 14 June 2022

by F Rafiq BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 July 2022

Appeal Ref: APP/M4320/W/22/3293755

459 Lord Street, Southport PR9 0AQ

- 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 Nagender Chindam (Sri & Jays Limited) against the decision of Sefton Council.
 - The application Ref DC/2021/02736, dated 19 November 2021, was refused by notice dated 20 January 2022.
 - The application sought planning permission for a change of use from an estate agents (A2) to a restaurant (A3) without complying with a condition attached to planning permission Ref DC/2017/00968, dated 12 October 2017.
 - The condition in dispute is No 3 which state that: *"The premises shall not be open for business outside the hours of 07:00 - 00:00"*.
 - The reason given for the condition is: *"In the interests of residential amenity"*.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The appeal site comprises of a ground floor restaurant unit which was granted permission (DC/2017/00968) in October 2017. Conditions were imposed, including one that restricted the hours that the use could operate. The application which is the subject of this appeal seeks to vary these conditions to allow an additional two hours of use from 12 midnight to 2am.

Main Issue

3. The main issue is whether the restriction on the hours of use is necessary and reasonable having regard to the living conditions of the occupiers of neighbouring residential properties, with particular reference to noise and disturbance.

Reasons

4. Lord Street is a busy high street in a town centre location which contains a range of ground floor uses, including retail, restaurant and drinking establishments. The site has an external area to the rear of the main building, beyond which is a building that leads on to Stanley Street. It was evident from my site visit that unlike the busy Lord Street with its range of commercial activities, Stanley Street was quieter and contained residential properties. Given the proximity of residential properties along Stanley Street, outdoor activity in this area, such as music and talking would likely cause an

unacceptable level of noise and disturbance to local residents at a time of day when much lower levels would be reasonably expected.

5. The appellant has said the external seating area can cease at midnight, allowing the business to operate after this time from the remainder of the property. Although further details defining the extent of the external area could be sought and the extended hours be limited to Friday's and Saturday's, I have not been provided with details on how a differing restriction on the business hours between the internal and external areas could be implemented. I was able to see that as well as the main building, there is a further building within the red edge, adjacent to Stanley Street. Whilst the rear door from the main building on Lord Street could be locked, the rear building to Stanley Street would need to be accessed from the outdoor seating area or from Stanley Street itself. It would not be clear how those passing through this space could be differentiated from those utilising this space. As such, based on the evidence before me, I am not convinced that such a restriction could be effectively monitored and enforced given the overall lawful use of the site within the defined appeal site.
6. The said condition is therefore necessary and reasonable, having regard to the effect that the additional hours of operating would have on the living conditions of neighbouring residential occupiers due to potential noise disturbance. In this respect the proposal would conflict with Policy EQ4 of the Local Plan for Sefton, which seeks, amongst other matters, to minimise the risks of adverse impacts including from noise.
7. Although the process to obtain a premises licence is rigorous and includes extensive consultation, there is a clear distinction between licensing considerations and those of planning. In the case of the latter, planning permission relates to the use of the land and typically, does not take account of the occupant of the premises at any particular time.
8. The proposal would support the business in a competitive environment with rising electric utility costs and particular difficulties within the hospitality sector¹, particularly after the Covid-19 pandemic. This would have a wider benefit in supporting local jobs, the vitality and viability of the town centre at night and in heritage terms where there are properties that are currently vacant. Whilst recognising these benefits, particularly for small businesses, they would be significantly off-set by the likely adverse impact upon the neighbouring residential occupiers. I am also unaware that, without the change in opening hours, the business would necessarily struggle in these regards.
9. My attention has been drawn to various other establishments in the area which have later operating hours than the appeal business. I am not aware of the full circumstances of these referenced cases, including when they were granted planning permissions and their relationship to surrounding residential properties. Although a number of these are said to have outdoor seating to Lord Street, there is no information before me on whether any have seating to the rear, behind the buildings fronting Lord Street. As such, I cannot be certain that any of these other uses are comparable to the appeal scheme.
10. A Grade II listed veranda is situated to the front of part of the appeal terrace. The appeal site is also situated within the Lord Street Conservation Area. I

¹ Coronavirus and its impact on UK hospitality: January 2020 to June 2021 (Office for National Statistics)

have had special regard to the statutory duty where it is necessary to pay special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area and the building. Since the appeal scheme would not involve any operational development or material changes of use, I do not find harm in regard to these matters.

Conclusion

11. I have found that the development would conflict with the development plan read as a whole. It has not been demonstrated that there are any material considerations of sufficient weight to warrant a decision otherwise than in accordance with it. Therefore, the appeal is dismissed.

F Rafiq

INSPECTOR