



Appeal Decision

Site visit made on 19 July 2022

by John Gunn DipTP, DipDBE, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th August 2022

Appeal Ref: APP/P0240/W/21/3284984

Vantage Indian Restaurant, 31 High Street South, Dunstable LU6 3RZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant, subject to conditions, of approval required under a development order.
 - The appeal is made by Mr Mohammed Ali against the decision of Central Bedfordshire Council.
 - The application Ref CB/21/02737/FULL, dated 29 June 2021, was granted approval by notice dated 6 October 2021 subject to conditions.
 - The development granted approval is the erection of outdoor seating area and covered rear entrance to facilitate outdoor use of restaurant. Part retrospective.
 - The condition in dispute is No 5 which states that: The outside customer seating area hereby approved shall only be used between 1800 hours and 2230 hours on any day.
 - The reason given for the condition is: To safeguard the residential amenity which the occupiers of neighbouring properties might reasonably expect to enjoy. (Section 12, NPPF).
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Decision

1. The appeal is allowed and the planning permission Ref CB/21/02737/FULL for the erection of outdoor seating area and covered rear entrance to facilitate outdoor use of restaurant at Vantage Indian Restaurant, 31 High Street South, Dunstable LU6 3RZ granted on 6 October 2021 by Central Bedfordshire Council, is varied by deleting conditions 5 and substituting for it the following condition:

‘(5) The outside customer seating area hereby approved shall only be used between the following hours:

1800–2230 Monday to Saturday

1200–2230 Sunday and Bank Holidays.’

Procedural Matters

2. Although I was unable to enter the site, I was still able to fully assess the development from the surrounding areas, including Priory Gardens, and was able to determine the relationship between the surrounding properties, including nearby residential uses.
3. The appellant originally sought permission for opening hours of 1700–2330 Monday to Saturday and 1200–2330 Sunday. The planning permission issued by the Council allows the outdoor customer seating area to be used between 1800 and 2230 on any day. The appellant’s statement indicates a desire to vary the condition to allow opening hours of 1200–2330 for Sundays and Bank Holidays, although he has indicated a willingness to negotiate alternative opening times, for example 1200–2230, on those days.

Main Issue

4. Paragraph 56 of the National Planning Policy Framework (the 'Framework') establishes that conditions should only be imposed where they meet the tests of being necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.
5. Therefore, the main issue is whether condition 5 is reasonable, with regard to the effect the opening hours have on the living conditions of the occupants of nearby properties in respect of noise and disturbance.

Reasons

6. The appeal site sits within a terrace of commercial properties, some of which have residential uses on their first and second floors. It faces onto High Street South, one of the main roads through Dunstable. To the rear of the property is the Priory Gardens, and the Priory Gardens Surgery and Dunstable Health Centre.
7. At the time of my site visit High Street South did not appear to be particularly heavily trafficked and few pedestrians were present. I acknowledge that the intensity of vehicular and pedestrian use of the area may vary at different times. However, given the nature of the uses along this part of High Street South, any increase in activity at other times of the day would be likely to be limited.
8. The nearest similar uses appear to be located on High Street North, West Street and Church Street, and fall within the main commercial area of Dunstable. That said, there are a small number of restaurants and take-aways located in High Street South. These include a take-away called 'Rack and Bone' which operates from No 29 and a 'KFC' at No 35. These businesses are open for business up until 2230 and 2300 respectively. Priory House (No 33) lies immediately to the south of the appeal site and operates as a tea room from 1000-1630 daily (with the exception of Sunday when it is closed).
9. Given the above, it is likely that there will be a comparatively low level of background noise at most times. Consequently, and in light of the close relationship between residential properties and the appeal premises, I find that it was reasonable and necessary for the Council to impose a condition restricting the hours during which the external seating area is used in order to safeguard the living conditions of neighbouring occupiers. Whilst the appellant has reluctantly accepted the times imposed by the Council for Monday to Saturday, he asserts that they are too restrictive on Sundays and Bank Holidays.
10. In such an environment it is reasonable for nearby occupants to expect a level of peace and quiet, particularly at night time. The Council's Environmental Health Officer indicated that they had no objections subject to the external areas being restricted to 2230 on any given day. In this regard I find that any activity within the external seating areas beyond 2230 would be readily apparent to nearby occupiers and would be harmful to their living conditions by reason of noise and disturbance. Their properties would be less pleasant places to live. Therefore, I agree with the closing times imposed by the Council.
11. Notwithstanding the above, activity in the area, during the afternoon and early evening on Sundays and Bank Holidays, is likely to be higher than late at night.

Background noise levels are also likely to be more elevated. Therefore, it is unlikely that the use of the outdoor seating area between 1200 to 1800 on Sundays and Bank Holidays, as requested by the appellant, would result in an increase in noise and disturbance, to the extent that it would cause harm to the living conditions of nearby residents.

12. I have also taken into account the use of Priory Gardens for events such as fairs and an outdoor cinema, and the assertion that crowd participation could be heard from residential units above the Vantage Indian Restaurant. Whilst this may be the case I have no details of the events, including the times that they took place. These events have not had any bearing on my decision.
13. With the exception of the opening times on Sundays and Bank Holidays, as set out above, I therefore conclude that condition 5 as worded is reasonable with regard to the effect of the proposed opening hours on living conditions of the occupants of nearby properties in respect of noise and disturbance. With a suitable amendment I consequently conclude that the development complies with the relevant provisions of policy HQ1 of the Central Bedfordshire Local Plan 2015-2035, and paragraph 130 of the Framework which jointly seek developments that seek a good standard of amenity for all existing and future occupants of land and buildings.

Other Matters

14. I also note the appellants intention to provide a Noise Management Plan. This is a requirement on condition 1 of the approval and will remain in force. It does not affect any decision I might come to relating to condition 5.
15. I have also taken into account the duty, set out in section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, to pay special attention to the desirability of preserving or enhancing the character and appearance of the heritage assets. In this regard I find that the development would not harm the setting of the nearby grade II* listed Priory House, or Priory Gardens setting, which is itself covered by Schedule Monument designation, or the Dunstable Conservation Area.

Conclusion

16. A condition restricting the opening hours for the outdoor customer seating area as set out above is reasonable given the nature of the development and its surrounding context and is consistent with the development plan as a whole and with the approach in the Framework. However, condition 5 has not been appropriately justified in respect of Sunday and Bank Holiday opening times and is thus unreasonable. I therefore conclude that the appeal should succeed and shall therefore vary the planning permission by deleting the disputed condition and substituting for it an amended condition 5 as indicated above.

John Gunn

INSPECTOR