



Appeal Decision

Site visit made on 6 September 2022

by Mark Caine BSc (Hons) MTPL MRTPI LSRA

an Inspector appointed by the Secretary of State

Decision date: 27 September 2022

Appeal Ref: APP/M4320/W/22/3290446

47 Ovington Drive, Southport PR8 6JW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Mr Weatherby against the decision of Sefton Metropolitan Borough Council.
 - The application Ref DC/2021/02299, dated 16 September 2021, was approved on 8 December 2021 and planning permission was granted subject to conditions.
 - The development permitted is 'Proposed outdoor seating area (retrospective)'.
 - The condition in dispute is No 3 which states that: *'The outdoor seating area shall not operate outside the hours of 08.00 to 21.00 hours, and outside of these hours all furniture shall be removed from the highway and stored within the curtilage of the building'*.
 - The reason given for the condition is: *'To safeguard the living conditions of neighbouring occupiers'*.
-

Decision

1. The appeal is dismissed.

Background and Main Issue

2. Planning permission was granted in December 2021 for an outdoor seating area in connection with a café/bar subject to the imposition of a planning condition (3) to restrict its hours of operation to between 08:00 and 21:00. The Council considers this condition to be necessary to safeguard the living conditions of neighbouring residents.
3. The main issue is whether the condition is reasonable and necessary in the interests of the living conditions of the occupiers of neighbouring residential properties, with particular regard to noise and disturbance.

Reasons

4. The appeal relates to an outdoor seating area that is enclosed by a low timber fence and is situated on highway land facing a small shopping parade which includes a café/bar at 47 Ovington Drive. Despite the presence of this shopping parade and a public house on the eastern side of Ovington Drive, there are residential properties on the western side of this highway, and the prevailing character of the area is residential. The site is also defined as a Primarily Residential Area in A Local Plan for Sefton 2017 (Local Plan).
5. The appellant considers the 21:00 hour restriction in condition 3 to be too early, and not commensurate with the closing time of the nearby public house, which has an outside seating area. A representation received from the

appellant indicates that they are seeking to vary the disputed condition in order to allow the outside seating area to be used up until 22:00 hours.

6. However, no firm evidence to substantiate the opening hours of the public house or any other property in the locality is before me. Technical evidence to demonstrate the existing and predicted noise levels has also not been provided by either main party. From what I could see on my site visit, other commercial units within the shopping parade are limited to mainly daytime opening hours, with only the SPAR convenience store, and possibly No 47, having closing times of around 22:00 hours.
7. Nonetheless, the outside seating area is situated in a relatively isolated location on the opposite side of the shopping parade's access road, and much closer to residential properties than No 47, the SPAR store and other units. Notwithstanding any background traffic noise, it is therefore not unreasonable to expect the immediate locality, which is predominantly residential, to significantly quieten during the evening and at night.
8. Additional noise and disturbance after 21:00 hours arising from customers eating, drinking, talking, shouting or laughing outside, and then leaving the site, along with the movement of the tables and chairs after 22:00 hours, would, in my view, be likely to harm the living conditions of nearby residents. This would especially be the case during summer evenings, weekends and bank holidays when the occupiers of the nearby residential properties would be likely to use their garden areas or have their windows open.
9. In reaching this view, I have also been mindful of a local resident's objection regarding the impact that the outside seating area had on their amenities later at night, prior to it receiving retrospective planning permission. I have no substantive reason to question this.
10. Based on the evidence before me, having regard to the tests set out in paragraph 56 of the National Planning Policy Framework (the Framework), I am therefore unable to find that condition 3 is not reasonable and necessary in the interests of the living conditions of the occupiers of neighbouring residential properties, with particular regard to noise and disturbance.
11. As such, the development without the disputed condition would conflict with Local Plan Policies EQ4, EQ10 and HC3. Amongst other things, these permit proposals for food and drink, and non-residential development in Primarily Residential Areas where they would not cause significant harm to local amenity, and the living conditions of neighbouring properties, from noise. It would also fail to accord with paragraph 130 of the Framework which seeks a high level of amenity for all existing and future users.

Other Matters

12. Previous complaints from a neighbour about the pruning of a highway tree, along with confusion regarding the requirement for a stopping up order and the cost of the planning application and the rent for the private land have been referred to me by the appellant. However, these factors have not had any bearing on my decision as I have only had regard to the planning merits of the proposal that is before me.
13. I have been made aware of the amount of local resident's letters received in support of the proposal at planning application stage. However, the level of

support is not a determining factor in the consideration of an appeal. Moreover, these representations mainly referred to the outside seating area improving the character and appearance of the area and highway safety. This would continue to be the case, irrespective of the outcome of this appeal.

14. The Government's previous advice in respect of spending more time outside, amidst restrictions due to the Covid-19 pandemic, is also acknowledged. However, this does not justify the granting of planning permission for a proposal which, in the absence of any firm evidence to the contrary, would result in unacceptable levels of noise and disturbance to the occupiers of nearby residential properties.

Conclusion

15. For the reasons given above, the appeal should therefore be dismissed.

Mark Caine

INSPECTOR