



Appeal Decision

Site visit made on 25 January 2023

by P J Staddon BSc, Dip, MBA (Distinction), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 March 2023

**Appeal Ref: APP/G2245/W/22/3300703
57 – 59 High Street, SEVENOAKS, TN13 1JF**

- 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 NS Catering Ltd against the decision of Sevenoaks District Council.
 - The application Ref 22/00315/CONVAR, dated 4 February 2022, was refused on 7 April 2022.
 - The application sought planning permission for the extension of opening hours by variation of condition 5 attached to the planning permission Ref SE/97/02051 for the 'Change of use of shop to restaurant within Class A3 of the Town and Country Planning (Use Classes) Order 1987' to extend the opening hours to 08:30am to 01.00am Monday to Saturday and noon to midnight on Sundays and Bank Holidays.
 - The condition in dispute (No 5) states: 'The hours of opening of the restaurant shall be restricted to 8.30am to 11pm from Monday to Saturday and 12.00 noon to 10.00pm on Sundays and Public Holidays.'
 - The reason given for the condition is: 'In the interests of the residential amenities of the area.'
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Decision

1. The appeal is dismissed.

Main issue

2. The main issue is the effect of the proposed extended opening hours on the living conditions of occupiers of nearby residential properties.

Reasons

3. The appeal property is a Grade II Listed building dating from the C18 and situated on the western side of High Street within Sevenoaks town centre and within the designated Sevenoaks High Street Conservation Area (SHSCA). The building is in mixed use, with the ground floor, including a dining area with a retractable roof at the rear of the premises, occupied by the appellant's restaurant and cocktail bar use, trading as *Ephesus*, and with residential accommodation above. The residential accommodation has its own address, No 57A High Street, and has its own entrance door on the south side of the property.
4. Attached to the building on its north side is No 61 High Street, which is in use as a Chinese restaurant/takeaway at the ground floor level and that property also appears to have living accommodation above the commercial space. This property sits on the corner with Rockdale Road, a side street which includes

some residential properties and a care home, along with service access to the rear of High Street properties and a driveway leading to Oak Tree Close, which is a gated cul-de-sac comprising 7 houses. To the south of the appeal property is a pedestrian walkway, a few metres wide, which leads to the rear parking/service area. Beyond the walkway is a brick-built complex containing a clinic and a bike shop at ground floor level, with a central lobby giving access to other commercial uses above. On the opposite side of High Street there are a range of commercial uses, including estate agents, solicitors, jewellers and a supermarket; most of these properties did not appear to include living accommodation at their upper levels.

5. In January 1998, Sevenoaks District Council (the Council) granted planning permission for the change of use of the appeal premises from a shop to a restaurant. Condition 5 attached to that permission restricted the opening hours of the restaurant to 8.30am to 11pm from Monday to Saturday and 12.00 noon to 10.00pm on Sundays and Public Holidays. The reason stated for this condition was 'in the interests of the residential amenities of the area'. There is no dispute between the main parties that the permission was implemented and that condition 5 remains in force. However, I note that the permission also included a noise control measures condition (No 2), but it is unclear whether this condition was ever discharged.
6. The appellant wishes to extend the permitted hours to allow the restaurant to operate later, until 01:00am on Mondays to Saturdays, and until midnight on Sundays and Bank Holidays. It appears to be accepted by the main parties that the business has been operating beyond its permitted hours.
7. The appellant's case explains that the business serves the community and promotes social interaction, but it has witnessed a steady decline and wishes to extend the hours of trading to enable the business to 'expand, grow, flourish, meet the needs [of] local customers and at the same time contribute to the viability and vitality of the high street'¹. The Council's submissions indicate that the use has been operating in breach of the permitted hours and that a number of complaints have been received from different residential addresses nearby.
8. On my site inspection, I observed that this part of the town centre is characterised by a mixture of commercial uses fronting the High Street, but there are also residential uses in close proximity, some above the ground floor commercial uses and others in nearby side streets. In this particular case, there is residential accommodation immediately above the restaurant itself and, seemingly, above its attached neighbour at No 61. There are also residential properties in Rockdale Road, notably flats at Burley Court to the rear of the appeal premises and houses at Oak Tree Close to the south, all within close proximity to the appeal property.
9. I also observed that, whilst there are other evening economy uses in this part of the town centre, they typically close at or before 11.00pm and I have not been made aware of any outlet trading after this time in this immediate locality. It is therefore reasonable to assume that, after 11.00pm, when establishments are closed and road traffic noise will be at its lowest, the locality will be relatively quiet and undisturbed.

¹ Appellant's Statement of Case paragraph 5.5

10. Whilst acknowledging that residents living in, or close to, town centre uses will be exposed to some noise and disturbance, and that that may be greatest on Fridays and weekends, the close proximity of residential properties to the appeal site creates a sensitive relationship. This sensitivity is increased late into the evenings and at night, when most other uses, including other nearby restaurants, have ceased operating. The appeal proposal would extend the restaurant/bar use, and its associated general activity from customers and staff, into this quiet period on every night of the week, when many residents are likely to be sleeping.
11. Any noise generated within the property itself is likely to be experienced by occupiers of the residential accommodation above the restaurant/bar and, potentially, by that above the neighbouring property next door which shares a party wall. I have noted the appellant's noise impact assessment, but this does not include any noise assessments of the impact on the residential accommodation above the restaurant/bar or the space above No 61. I cannot therefore be certain that noise would be adequately attenuated and that the living conditions for occupants of this residential accommodation would not be materially harmed.
12. I have also noted the appellant's submission that no representations from occupants above the premises were submitted at the application stage, but this is a matter of neutral weight. At my site inspection, the appellant's agent referred to the accommodation above the restaurant/bar as the 'manager's flat' and, whilst occupation by a manager may lessen that occupant's sensitivity to noise from his/her managed business, there is no guarantee that the accommodation will always be occupied in this manner. Indeed, the separate access and postal address indicate that it is capable of being occupied quite independently of the ground floor commercial use.
13. With regard to noise and disturbance effects to residents in the locality, these are likely to arise from noise emanating from the use itself, such as music being played and the sounds of people socialising, and from the comings and goings of customers and staff. The appellant's noise impact assessment includes recommended measures aimed at limiting noise emanating from the premises, including automatic volume controls, double glazing of the rear garden area, and good management, such as asking customers to respect neighbours by not shouting and keeping voices low. However, these recommended measures seem to confirm that the existing situation is less than ideal and a range of works are required, including double glazed structures affixed to a Listed building, for which no drawing details² are provided. It will also be the case that noise effects would be greater if doors and windows are left open, as may be the case in warmer months. I must also attach weight to the assessment and reservations of the Council's Environmental Protection Team and some weight to the submissions of interested parties, who allege that there have already been instances of the use spilling into the areas outside the premises and causing noise disturbance.
14. I have also noted the appellant's suggestion that a condition could be imposed to prevent music being played in the extended hours of operation. However, that would only mitigate one source of potential disturbance. Even if I were convinced that noise from the premises could be adequately controlled by the

² Appendix E of the appellant's Noise Impact Assessment includes a quotation for installation of an automatic guillotine glass system, but no other details are provided.

noise report's recommended measures and/or a condition limiting music playing, there would still be noise and general activity associated with the inevitable comings and goings from the extended hours of operation. These effects, including likely noise and associated vehicle movements, would extend late into the night and well past a time when residents could reasonably expect a lack of any such disturbance. These effects are likely to be harmful to the living conditions of occupiers of nearby residential properties.

15. I have considered a number of Sevenoaks planning cases cited by the appellant as claimed 'precedents' for extended opening hours at the appeal premises. In my assessment, none of these cases are directly comparable to the appeal proposal. The Blighs Meadow case related to delivery hours to retail premises, which were allowed to be extended to 9.00pm; the Carlton Parade case related to an opening hours extension to 9.00pm for a health related use; and the 54 High Street case was also an extension up to 9.00pm. None of the cases therefore involved extending hours beyond 11.00pm on weekdays and Saturdays and/or up to midnight on Sundays. In any event, each case will differ in terms of its relationship with, and impact upon, the living conditions of occupants of neighbouring residential properties.
16. I have also considered the appellant's submissions concerning the National Planning Policy Framework's (the Framework) support for planning decisions which create the conditions for businesses to invest, expand and adapt. However, there is no convincing evidence before me to demonstrate that trading into the early hours 6 days a week is necessary to operate a successful restaurant/bar business in this location. In any event, any economic benefits that may arise from the proposal would be quite limited and would be significantly outweighed by the harm to neighbours' living conditions that I have identified, the protection of which is afforded weight by other parts of the Framework.
17. Overall, I assess that the appeal proposal as submitted would be likely to unacceptably harm the living conditions of neighbouring residential occupiers. I have further assessed that these concerns could not be adequately addressed by the imposition of planning conditions. As a result, the likely harmful effects would be contrary to policies EN2 and EN7 of the Sevenoaks Allocations and Development management Plan (adopted 2015) which, respectively, require proposals to safeguard the amenities of existing and future occupants of nearby properties, and avoid unacceptable noise impacts. It would also conflict with paragraph 130 of the Framework which, amongst other matters, requires proposals to achieve a high standard of amenity for existing and future users.

Other matters

18. I have noted submissions concerning alcohol licensing matters, including those relating to a previous use at the premises. Whilst there may be some overlap with licensing issues, I have confined my consideration to planning matters.

Conclusion

19. For the reasons stated above, the appeal is dismissed.

P. Staddon

INSPECTOR