



Appeal Decision

Site visit made on 6 March 2023

by J D Clark BA (Hons) DpTRP MCD DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 July 2023

Appeal Ref: APP/Z4310/W/22/3306989

45-61 Duke Street, City Centre, Liverpool L1 5AP

- 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 David Scrowcroft of PINS Social Club against the decision of Liverpool City Council.
 - The application Ref 21F/3551, dated 6 October 2021, was refused by notice dated 7 April 2022.
 - The application sought planning permission to change use of existing car park and insertion of mezzanine floor to form mixed use development, including restaurant/bar (Use Class A3/A4) and bowling alley (Use Class D2), creation of lower ground floor to Duke Street, rebuild derelict two storey building to rear and reconfiguration of Duke Street frontage to provide new openings without complying with a condition attached to planning permission Ref 17F/3529, dated 23 February 2018.
 - The condition in dispute is No 10 which states that: *The use shall not take place other than between the hours of 0700-0200 on any day. All customers are to have left the premises by 0200 hours.*
 - The reason given for the condition is: *To ensure that nearby occupiers are not adversely affected by the development in accordance with Policy HD18 of the Liverpool Unitary Development Plan.*
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The original planning permission referenced the Liverpool Unitary Development Plan which has now been superseded by the Liverpool Local Plan¹. The latter is cited in the decision notice relevant to this appeal and I have determined the appeal on the basis of this document.

Background and Main Issue

3. The appeal site comprises a substantial building that includes a restaurant/bar and bowling alley. It is used for indoor sporting events; live and recorded music; exhibition of films; the provision of late night refreshments; and the retail sale of alcohol². It is known as PINS Social Club and a condition on its planning permission permits it to operate between 0700 and 0200 on any day. The proposed variation would extend this by 30 minutes to 0230.

¹ Liverpool City Council Liverpool Local Plan 2013-2033 Adopted January 2022.

² Under the terms of its licence (Licensing Act 2003 – Premises Licence LA180034) and as referred to in the original planning approval Ref 17F/3529.

4. The reason for the hours condition is to ensure that nearby occupiers are not adversely affected by the development. The reason for refusing the extension of the later night opening time is that it would cause significant harm to residential amenity due to noise from customer's comings and goings at a time and intensity which local residents currently do not experience.
5. Therefore, the main issue is the effect varying the opening hours would have on the living conditions of the occupiers of nearby residential properties with regard to noise and disturbance from customers comings and goings.

Reasons

6. Duke Street is located within Liverpool City Centre and comprises a mix of restaurants, bars and other entertainment establishments many of which open late at night. There are also upper floor flats on Duke Street and in the surrounding area including Wolstenholme Square to the rear of the premises. The Club has doors opening out onto Duke Street and Wolstenholme Square.
7. There is relatively recent development at Wolstenholme Square comprising ground floor commercial uses and upper floor flats. Much of the ground floor has yet to be occupied but the Council state that restaurants in Wolstenholme square must close at midnight whilst properties on Duke Street are generally allowed to open until 0200 hours.
8. Local Plan Policy CC21 provides criteria for managing the night-time economy within the City Centre and the submitted extract from the Council's SPD³ sets out the development principles for ensuring that a mix of uses can be provided in a complementary way. It does this by dividing the area into land use typologies with the appeal site and Wolstenholme Square being in Typology 1 and most of Duke Street, including the properties opposite and to the north-west and south-east of the appeal site being in Typology 2.
9. The SPD states that in Typology 2 areas it is generally expected that premises will close by 0200 hours. In Typology 1 areas flexible opening hours are likely to be acceptable. However, the SPD does not explain this further and although it could be interpreted as accepting later opening times, this is not borne out by restrictions to properties in Wolstenholme Square, which fall within Typology 1, where restaurants are required to close by midnight.
10. Nevertheless, the typologies recognise the importance of a vibrant environment during the day and night whilst balancing these with the living conditions for residential occupiers. The SPD recognises that there could be conflict across the boundaries of these typologies in areas such as Duke Street and Wolstenholme Square. The appeal site is located in just such a location.
11. Whilst a main road, Duke Street it is not especially wide, and residents live at the upper floors in properties opposite the entrance/exit of the appeal site and on the same side of the road. Likewise, residents in the upper floors of the properties in Wolstenholme Square would be close to the entrance/exit of the appeal site on this side of the building. Due to this proximity, residents in both Duke Street and Wolstenholme Square would be affected by activity generally associated with people entering and leaving the premises.

³ RopeWalks Supplementary Planning Document: 5 Development Principles for RopeWalks.

12. Given that the premises are in the City Centre, residential occupants would expect a degree of late night activity and some disturbance late at night would be likely. However, whilst that is an inevitable consequence of City living it is also reasonable that residents should have some respite as acknowledged in the SPD. There is little substantive evidence before me of the type and numbers of people expected to leave the premises at the later time of 0230. However, it seems to me that the uses of the appeal site could result in vehicle and pedestrian movements late at night in an area where past 0200 hours, given the restrictions on other premises, the pedestrian and vehicular movements to surrounding premises will have subsided.
13. Local Plan Policy CC21 requires soundproofing for new residential properties. However, I have no evidence of what, if any soundproofing has been installed at adjacent developments or its effectiveness. Therefore, I am unable to establish if any of the adjacent residential properties are protected from night-time noise. I accept that no objections have been received from local residents in relation to extending the opening hours at the appeal site but this cannot be taken as specifically supporting a later opening time.
14. The appellant cites a number of examples of premises opening later than 0200 in the surrounding area and whilst I do not doubt this to be the case, I have no information as to whether or not these affect the living conditions of surrounding residents or to assess how the later opening of these premises affects the noise environment adjacent to the appeal premises. I cannot therefore make a direct comparison with the appeal site.
15. The appellant points out that PINS Social Club has proved itself to be a good neighbour in that no enforcement action has been initiated. Further, the Club has secured a later licence for its opening hours and has satisfied the licencing authority that the proposed hours meet its objectives. However, the lack of any complaints could indicate that the existing restrictions are working effectively and does not establish that longer opening hours would not result in noise and disturbance to existing residents.
16. The Club's management has identified that extending the opening hours as being popular with customers. Further, the Club considers the existing hours are overly restrictive and impacts directly on the viability of the premises particularly following the difficulties of the covid pandemic. However, I have no substantive evidence that the Club is experiencing problems with regard to its viability or even if it is that extending the opening hours is the only approach open to the Club to improve its viability.
17. The appellant considers that the existing condition does not meet the test of reasonableness as set out National Planning Policy Framework and the Planning Practice Guidance⁴. However, based on the limited evidence provided I am satisfied that the condition balances the needs of the night-time economy with the protection of the living conditions of nearby residents.
18. For the above reasons I therefore conclude that varying the opening hours would have a harmful effect on the living conditions of the occupiers of neighbouring properties in conflict with Local Plan Policies CC21, CC22 and SP4. In particular, Local Plan Policy CC21 indicates that planning conditions will be

⁴ Ministry of Housing, Communities and Local Government, 2021 (the Framework) and the Planning Practice Guidance, Published 6 March 2014 – Updated July 2019.

used to manage the hours of operation to ensure residential amenity is protected and Local Plan Policies CC22 and SP4 require development proposals to demonstrate that there would be no adverse impact on residential amenity. Therefore condition 10 is necessary and should be retained unaltered.

Conclusion

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

J D Clark

INSPECTOR