



Appeal Decisions

Site visit made on 16 January 2024

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

an Inspector appointed by the Secretary of State

Decision date: 19th February 2024

Appeal A Ref: APP/M4320/W/23/3327849

Becca's Bites, 72 Moor Lane, Thornton, Liverpool L23 4TW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr & Mrs C Williams of Becca's Bites against the decision of Sefton Metropolitan Borough Council.
 - The application Ref DC/2023/00634, dated 12 April 2023, was refused by notice dated 7 June 2023.
 - The application sought planning permission for the change of use of the rear part of the ground floor of the premises to a coffee shop incorporating a single storey extension to the rear without complying with a condition attached to planning permission Ref DC/2018/00148, dated 9 March 2018.
 - The condition in dispute is No 4 which states that: *No external seating shall be provided in connection with the coffee shop unless expressly authorised.*
 - The reason given for the condition is: *To prevent noise and disturbance to nearby residents.*
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Appeal B Ref: APP/M4320/W/23/3327848

Becca's Bites, 72 Moor Lane, Thornton, Liverpool L23 4TW

- 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 & Mrs C Williams of Becca's Bites against the decision of Sefton Metropolitan Borough Council.
 - The application Ref DC/2023/00633, dated 12 April 2023, was refused by notice dated 7 June 2023.
 - The application sought planning permission for the change of use of the rear part of the ground floor of the premises to a coffee shop incorporating a single storey extension to the rear without complying with a condition attached to planning permission Ref DC/2018/00148, dated 9 March 2018.
 - The condition in dispute is No 5 which states that: *The coffee shop must not be open to business outside the hours of 08:00 – 19:00 Monday to Friday, 08:00 – 17:00 Saturday and 10:00 – 14:00 Sunday.*
 - The reason given for the condition is: *To prevent late night noise and disturbance to nearby residents and to protect the character of the area.*
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Decision - Appeal A Ref: APP/M4320/W/23/3327849

1. The appeal is dismissed.

Decision - Appeal B Ref: APP/M4320/W/23/3327848

2. The appeal is dismissed.

Preliminary Matters

3. As set out above there are two appeals on this site. They differ in that Appeal A relates to the provision of an outdoor seating area whilst Appeal B relates to the opening hours of the coffee shop. I have considered each appeal on its individual merits. However, to avoid duplication I have dealt with the two schemes together, except where otherwise indicated.
4. A revised version of the National Planning Policy Framework (the Framework) was published in December 2023 and is a material consideration to this appeal. Having considered the revisions to the Framework, as well as the principles of natural justice, together with the nature of the determining issues in this appeal it is clear to me that there are no material changes in the revised Framework relevant to the substance of this appeal. Therefore, I do not consider it necessary, in this instance, to invite any submissions from the parties on the revised Framework.
5. Under Condition 5 the coffee shop can open during the following times: -
 - 0800 – 1900 – Monday to Friday;
 - 0800 – 1700 – Saturday; and
 - 1000 – 1400 – Sunday.

The appellant proposed altering these times to: -

- 0800 – 2200 – Monday to Saturday; and
 - the outside seating area to be open from 0900 to 1800 daily¹.
6. Condition 4 precludes any outdoor seating area at all. I saw on my site visit that there were tables/benches in the outdoor area and from the submissions with these appeals, the outdoor area is currently used in breach of this condition. The appeal proposal is to remove the condition and allow the outdoor seating area to be used in accordance with the above opening times.

Main Issue

7. The main issue for Appeal A and Appeal B is the effect of the proposals on the living conditions of nearby occupiers with particular regard to noise and disturbance.

Reasons

8. The appeal site comprises a barber's shop and coffee shop on the ground floor with a paved area to the rear laid out with tables/benches. The upper floor is in residential use. No 72 Moor Lane is at the end of a row of commercial properties that wrap around The Crescent, and front both Moor Lane and Edge Lane. Adjacent to No 72 are a row of residential properties to the south-west, with No 70 Moor Lane immediately adjacent to the appeal site. On the opposite side of Moor Lane there is a supermarket and its car park. To the rear of the site, there are the rear gardens of residential properties on Thornfield Road.

¹ The appellant initially sought permission for an outdoor seating area to be open until 2000 daily. During the application process the appellant sought to reduce the permitted hours of use for the outdoor seating area to 1800. Despite stating such a change would not be acceptable, the Council's decision notice for Appeal B refers to opening hours of 0900 – 1800 daily. Given this is not a matter of dispute between the main parties, and no one would be disadvantaged by this change, I have considered the hours for the outdoor seating area to be those listed on the Council's decision notice.

9. The occupiers of surrounding residential properties may experience some noise and disturbance from the general activity associated with the commercial premises in the area especially those close to the Moor Lane and Edge Lane junction and the parking areas outside the commercial properties on The Crescent. By contrast, the rear of the premises is quieter and it is reasonable for residents to expect less noise and disturbance in their rear living areas and gardens.
10. The coffee shop was closed at the time of my site visit but the outside area could accommodate a substantial number of people that could generate a level of activity that would cause disturbance. I note that there are bi-fold doors that lead to the outdoor seating area which, when open, would allow noise from the indoor area to spill out into the area outside. Whilst this could happen regardless of the use of the outdoor area, and I note the Council has no particular concerns about this, the coffee shop could accommodate significantly more people if the outdoor space was used as well. In which case, the level of noise and disturbance would be very likely to increase to unacceptable levels for nearby residents.
11. The appellants state that the use of the outdoor area is dependent on weather conditions. Whilst this may be the case to some degree, it would be easy to provide large umbrellas and heaters positioned around the tables/benches so the harm could arise at any time of the year. In the summer months or during fine weather neighbours would be more likely to have windows open and be utilising their gardens so an argument based on weather permitting carries little weight in favour of outdoor seating.
12. The Council has suggested a Noise Impact Assessment in order to fully assess the noise implications of the use of the outdoor seating area. No such assessment has been carried out and so no evidence has been submitted that the proposal would not be harmful.
13. The appellant has suggested that any noise and disturbance could be managed by imposing a temporary permission for 12 months which, together with a restriction on the use of the outdoor area to no later than 1800, would enable the Council to monitor the situation. Also, a Management Plan is suggested as a means of restricting the number of people using the outdoor space.
14. The number of customers using the outdoor seating area could be included in a Management Plan and as such a plan could be secured by a condition attached to any grant of planning permission were the appeal to be allowed. Similarly, the hours of use of the outdoor area could also be controlled by a suitably worded condition. However, even with such a Management Plan and hours of use, I am satisfied that the close proximity of the various dwellings/gardens and the appeal site means it is very likely there would be unacceptable noise and disturbance. A temporary permission would not therefore, be appropriate in this case.
15. I appreciate that some people may prefer to sit outside especially with regard to ongoing concerns about Covid and an outdoor seating area would be good for the business. However, these matters do not overcome the harm I have identified.
16. Turning to the opening hours, given my conclusion on Appeal A, the part of the proposed amended condition relating to the outdoor area is not applicable. With regard to the coffee shop itself, the proposal would extend the closing time from 1900 until a further three hours later at 2200 Mondays to Fridays and for a further five hours from 1700 until 2200 on Saturdays.

17. Although the coffee shop is in a parade of shops there are residential properties close by, as referred to above, and extending its opening times until 2200 six days a week is likely to cause noise and disturbance from people coming and going at a time when surrounding residential properties could reasonably expect the area to be quieter as other premises in the parade close. Later opening hours would also alter the character of the premises from a daytime coffee shop to a night-time venue which would not be consistent with the overall character of the parade as providing a range of commercial services primarily during the day. The approved opening hours included four hours on Sundays, and no opening hours are now proposed for this day. However, given the already limited hours for Sunday, any benefit arising from this would be small.
18. I appreciate that there may be take-aways in the area that open late but there is currently only one take-away in the commercial block on Edge Lane which may open later into the evening, and a sandwich shop which closes at 1730. Moreover, unlike other commercial businesses in the immediate area, the coffee shop is at the rear of the premises whilst its access is from the front, therefore, activity is likely to be notable at both the rear and the front of the property.
19. Consequently, the proposals would have a harmful effect on the living conditions of nearby occupiers with particular regard to noise and disturbance. This would conflict with Policies HC3 and EQ10 of the Sefton Local Plan² which seek to protect the living conditions of occupiers of neighbouring properties and local amenity, and with the Framework in this regard.

Other Matters

20. The appellant's states that the barber's shop could extend their opening hours without the need for any approval. Also, the barber's shop has been described as an A1 use which following changes to the Use Classes Order, would now fall under Class E. The coffee shop would fall under the same Use Class. This could mean that the barbers could become a coffee shop which would mean that the whole of the unit would become a coffee shop falling within Use Class E. However, whilst I accept that such a situation could become confusing, it is not a matter that overcomes the harm I have identified.
21. I appreciate that there would be no issues relating to overlooking or loss of privacy to neighbours but these are not matters that overcome the main issue I have raised.

Conclusion

22. For the reasons given above, I conclude that conditions 4 and 5 are necessary having regard to the living conditions of nearby occupiers and therefore both Appeal A and Appeal B are dismissed.

J D Clark

INSPECTOR

² Sefton Council – Sefton 2030 – A Local Plan for Sefton, Adopted April 2017.