



Appeal Decision

Site visit made on 29 January 2024

by R Major BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 February 2024

Appeal Ref: APP/J4423/W/23/3328335
293-295 Ecclesall Road, Sheffield S11 8NX

- 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 Nathan Gordon on behalf of Copa Ltd against the decision of Sheffield City Council.
- The application Ref 23/02030/CHU, dated 22 June 2023, was refused by notice dated 21 July 2023.
- The application sought planning permission for use of retail unit (Use Class A1) and residential flat (Use Class C3) as a drinking establishment with small food offering (Use Class A4), including internal refurbishment without complying with a condition attached to planning permission Ref 23/01337/CHU, dated 13 June 2023.
- The condition in dispute is No 7 which states that:

For a period of two years following the date of this decision, no customer shall be permitted to be on the premises outside the following times:

- 09:00-23:30 on Mondays to Thursdays;
- 09:00-00:30 (the following morning) on Fridays, Saturdays and any Sunday immediately preceding a Bank Holiday Monday; and
- 10:00-23:30 on Sundays and Public Holidays.

Thereafter, no customer shall be permitted to be on the premises outside the following times, unless otherwise approved in writing by the Local Planning Authority:

- 09:00-23:30 on Mondays to Saturdays and any Sunday immediately preceding a Bank Holiday Monday; and
- 10:00-22:00 on Sundays and Public Holidays.

- The reason given for the condition is:

In the interests of the amenities of the locality and occupiers of adjoining properties

Decision

1. The appeal is dismissed.

Preliminary Matters

2. Subsequent to the Council issuing its decision the revised National Planning Policy Framework (the Framework) was published on 19 December 2023 and updated on 20 December 2023. The amendments to the Framework do not affect the matters that are in dispute in the determination of this appeal. Where

reference is made to the Framework in this decision, the paragraph numbers are those that appear in the latest version.

3. Whilst not referred to in the reason for refusal, within their respective submissions both parties have made reference to Policy NC14 of the emerging draft Sheffield Plan. The draft Sheffield Plan has not been through Public Examination and therefore I attribute very limited weight to the emerging local plan and this policy in the determination of this appeal.

Background

4. Planning permission was originally granted for change of use from a retail unit to a drinking establishment with small food offering in April 2021¹ and this permission included a condition (No. 7) which restricted the hours of opening of the drinking establishment. The Council's reason for attaching this condition was to protect the amenities of the locality and adjoining properties.
5. A Section 73 application² was approved in April 2023 to extend the permitted closing time from 23:30 until 00:00 (midnight) on Fridays, Saturdays and any Sunday immediately preceding a Bank Holiday Monday, for a temporary period of two years. The varied condition however required that at the end of this temporary period the hours of opening revert to those conditioned on the original application.
6. An additional Section 73 application³ was approved in June 2023 to further extend the permitted closing time from 00:00 (midnight) until 00:30 (the following day) on Fridays, Saturdays and any Sunday immediately preceding a Bank Holiday Monday, and from 22:00 until 23:30 on Sundays and Public Holiday, again for a temporary period of two years. This condition also required that at the end of this temporary period the hours of opening revert to those conditioned on the original application, with the exception of allowing the premise to open until 23:30 on a Sunday immediately preceding a Bank Holiday Monday.
7. A further Section 73 application⁴ was submitted in June 2023 to extend the permitted closing time from 00:30 until 02:00 (the following day) on Fridays, Saturdays and any Sunday immediately preceding a Bank Holiday Monday, again for a temporary period of two years. The proposed varied condition includes a requirement that at the end of this temporary period the hours of opening would revert to those conditioned on the original application, with the exception of allowing the premise to open until 23:30 on a Sunday immediately preceding a Bank Holiday Monday. This S73 application was refused by the Council and is subject to this appeal.
8. In view of the above, as per condition 7 of planning approval 23/0668/CHU the appeal property currently has consent to open as follows:

For a period of two years following the date of this decision, no customer shall be permitted to be on the premises outside the following times:

- 09:00-23:30 on Mondays to Thursdays;

¹ 20/02805/CHU

² 23/00668/CHU

³ 23/01337/CHU

⁴ 23/02030/CHU

- 09:00-00:30 (the following morning) on Fridays, Saturdays and any Sunday immediately preceding a Bank Holiday Monday; and
- 10:00-23:30 on Sundays and Public Holidays.

Thereafter, no customer shall be permitted to be on the premises outside the following times, unless otherwise approved in writing by the Local Planning Authority:

- 09:00-23:30 on Mondays to Saturdays and any Sunday immediately preceding a Bank Holiday Monday; and
- 10:00-22:00 on Sundays and Public Holidays.

9. The appeal proposal seeks to vary condition 7 and opening hours as follows:

For a period of two years following the date of this decision, no customer shall be permitted to be on the premises outside the following times:

- 09:00-23:30 on Mondays to Thursdays;
- 09:00-02:00 (the following morning) on Fridays, Saturdays and any Sunday immediately preceding a Bank Holiday Monday; and
- 10:00-23:30 on Sundays and Public Holidays.

Thereafter, no customer shall be permitted to be on the premises outside the following times, unless otherwise approved in writing by the Local Planning Authority:

- 09:00-23:30 on Mondays to Saturdays and any Sunday immediately preceding a Bank Holiday Monday; and
- 10:00-22:00 on Sundays and Public Holidays

10. The difference therefore between the condition on the most recently approved application and the proposed varied condition is an increase in closing time from 00:30 until 02:00 (the following day) on Fridays, Saturdays and any Sunday immediately preceding a Bank Holiday Monday.

Main Issue

11. The main issue is the effect of the proposed variation of the condition on the living conditions of nearby residents, with particular reference to noise and disturbance.

Reasons

12. The appeal relates to a drinking establishment situated within the Ecclesall Road District Centre. The appeal property is a three-storey building, with a residential flat at second floor level, and forms part of a terrace row of commercial units consisting of a variety of shops, professional services, bars, restaurants and takeaways.
13. Within the wider area, beyond the boundary of the District Centre, there are a number of residential properties / streets, and directly to the rear of the appeal site are the rears of the residential properties fronting onto Pomona Street. From my site visit I observed that there are also likely to be residential uses within the upper levels of some neighbouring commercial properties within the District Centre.
14. I appreciate that the Ecclesall Road District Centre is a thriving daytime and evening destination and the surrounding area is a popular location for students to frequent and/or reside. Nevertheless, whilst I have not been provided with

any specific evidence of the demographics of nearby residents, it is highly unlikely that all residents in the vicinity are students. Furthermore, even if there is a high proportion of students residing in the area, their living conditions are still an important consideration.

15. The Noise chapter of the Planning Practice Guidance (March 2014, updated July 2019) (Planning Guidance) states that in areas which already experience high noise levels even a small increase in noise can result in a significant adverse effect. The Planning Guidance further states, people tend to be more sensitive to noise at night as they are trying to sleep and that the adverse impact of noise can be greater simply because background noise levels will be much lower at this time.
16. Therefore, whilst I accept there is already likely to be a degree of noise and general disturbance at night, the appeal proposal, seeking to extend the opening hours from 00:30 until 02:00 (the following day) on Fridays, Saturdays and any Sunday immediately preceding a Bank Holiday Monday, for a temporary period of two years, would result in more people visiting the premises and more activity taking place around the premises.
17. Groups of patrons arriving and leaving the premise by foot up until 02.00am, and then dispersing through the surrounding residential streets, would likely be in high spirits, particularly following the consumption of alcohol. In this context, instances of raised voices caused by customers arriving and leaving the premises would be very noticeable at times when the occupiers of nearby residential properties are entitled to expect a reasonable level of peace and quiet to sleep.
18. Consequently, the proposal would result in greater disturbance to the living conditions of neighbouring residential uses than the existing opening hours would. This would be even more harmful during warmer nights when residential properties would be more likely to have their windows open.
19. The appellant submits that there are other venues in the immediate area which operate later into the evening than the existing hours permitted at the appeal property, namely Kettle Black which opens until 02:00 (Thursday – Sunday inclusive) and the Nursery Tavern which opens until 01:00 on Friday and Saturday.
20. The Council indicates that the Nursery Tavern is not subject to opening hours controlled by planning condition, and in any case this venue is not open as late as the variation of condition proposes. Consequently, I find that this nearby property is not directly comparable.
21. With regard to the Kettle Black, I have been provided with limited information as to the planning history of this property and whether these hours of opening were permitted by way of planning condition. Nevertheless, I observed on site that there are various other drinking establishments in the District Centre and from the information before me the majority of these are operating at hours similar to those already permitted at the appeal premises. Therefore, even though some premises currently open later than the appeal site, allowing more businesses to do so would be likely to add to late night noise problems for nearby residents and those nearby residential streets, as customers make their way home.

22. My attention has also been drawn to drinking establishments within the City Centre which operate late into the night and are sited close to residential uses which the appellant regard as comparable to the appeal site. I visited these other drinking establishments within the City Centre during my site visit and observed that they are a significant distance away from the appeal site, and that the surrounding character of these City Centre locations was considerably different to that of the appeal site, which is located within a District Centre. As such these City Centre examples are not comparable to, and do not set a precedent for, the appeal proposal.
23. The appellant has stated that the current restricted hours of opening result in customers leaving the site at closing time and seeking later opening premises elsewhere, and this adds to the cumulative impact on the street. Whilst this point is understood, it could similarly be argued that the proposed later hours of opening would result in customers leaving other premises, which close earlier than the appeal site, and seeking the later opening times on offer at the appeal site, thus contributing to noise and disturbance in the area. Furthermore, when the appeal site closes at 02:00 these customers would leave the premise adding to and prolonging the late-night disturbance in comparison to the permitted hours.
24. The appellant refers to various mitigation measures that have been installed within the premises to ensure that music and sound emanating from within the property to the outside, and the existing flat above, is limited. Whilst this is appreciated, the concern here relates primarily to people leaving the premises later in the night and potentially adding to existing noise and disturbance on the surrounding streets for nearby residents.
25. Additionally, the appellant makes reference to a circa. 20 Temporary Event Notices (TENs) that have been permitted at the appeal site since April 2022 for extended opening times until 02:00 on specific days. Commenting that the allowance of these TENs by the Council's Licensing Team, and the absence of complaints relating to the appeal site during these events is evidence that the use can operate at the proposed hours without harming neighbouring resident's living conditions.
26. I acknowledge that I have not been provided with any evidence of any formal complaints from nearby residents in relation to the appeal site during the extended hours under the recent TENs. However, I consider noise and disturbance complaints are more likely to arise when a use operates consistently late into the night, in comparison to occasional disturbance arising from temporary events. As such, I accept that the previous TENs provide some evidence that the use can operate to the proposed hours on certain occasions without resulting in complaints. However, it is not sufficient evidence that the use can operate at these extended hours on a more consistent basis without harming nearby residents living conditions.
27. I also acknowledge the appellant's comments that the appeal premises currently operates to its permitted hours without complaints, and this is down to good management practices that would also be adopted within the proposed extended hours. Nonetheless, planning permission relates to the site and not the owner and therefore if the business changes hands there would be no guarantee that the new operators would operate with these same management practices. The appellant also advises that licenses can be altered or revoked if a

premise changes hands and issues arise, nevertheless this is not a planning matter.

28. The appellant contends that the proposed extended hours of opening would help to support the existing business, the night-time economy in general and benefit other business in the area, as encouraged by the Framework and the Sheffield Retail and Leisure Study (2022). Whilst I have not been provided with any detailed evidence in respect of the specific economic benefits that would arise from the proposed extended hours of opening, I acknowledge that there would undoubtedly be some economic benefits to the appeal premise, and wider area, and therefore this is a benefit to which I attribute moderate weight.
29. However, the economic benefits have to be balanced against any likely adverse effects on nearby residential occupiers, who are reasonably entitled to some peace and quiet, especially in the early hours of the morning. In this case I find the harm that would be caused to residents would outweigh any benefits arising from extending the opening hours.
30. I appreciate that the appeal proposal seeks to extend the opening hours for a temporary two-year period, with the appellant stating that this would allow for any impacts to be monitored by the Council. However, a period of two years is a significant period of time to subject nearby residents to a development that I have ultimately found would likely have a significantly harmful impact upon their living conditions.
31. The appellant has suggested within their Final Comments that they would also be willing to accept a condition that allows the proposed extended hours for a period of one-year, rather than the two-year period applied for. As this statement was made at Final Comments Stage the Council have not had an opportunity to respond. Nevertheless, for similar reasons to those given above, a year is still considered to be a significant period of time to subject nearby residents to a development that I have found would likely have a significantly harmful impact. As such, a condition limiting the proposed hours for a temporary period of one-year would not address the harm which I have identified.
32. Overall therefore, I conclude that the proposed extension to the opening hours until 02:00 (the following day) on Fridays, Saturdays and any Sunday immediately preceding a Bank Holiday Monday, for a temporary period of two years, would be likely to result in significant harm to the living conditions of nearby residents due to additional noise and disturbance in the early hours of the morning. Consequently, the proposal would be contrary to policies GE24 and S10 of the Sheffield Unitary Development Plan (1998) which amongst other things, together seek to ensure that proposals do not create noise levels which cause a nuisance and do not cause residents to suffer from unacceptable living conditions by way of noise. Furthermore, the proposal is also considered to be contrary to paragraph 135(f) of the Framework which seeks to ensure developments provide a high standard of amenity for existing users.

Conclusion

33. The proposal conflicts with the development plan taken as a whole and there are no material considerations to justify a decision otherwise than in accordance with the development plan. For the reasons given above, and having regard to

all other matters raised, I conclude that the appeal should be dismissed, and the condition retained in its present form.

R Major

INSPECTOR