



Appeal Decision

Site visit made on 10 April 2024

by Alison Partington BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 April 2024

Appeal Ref: APP/M4320/W/23/3328625

201A Altway, Aintree, L10 6LB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Kieron Jamieson against the decision of Sefton Metropolitan Borough Council.
 - The application Ref is DC/2023/00540.
 - The development proposed is the change of use of ground floor from retail (E) to a bar/café with the provision of outdoor seating (Sui Generis).
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of ground floor from retail (E) to a bar/café with the provision of outdoor seating (Sui Generis) at 201A Altway, Aintree, L10 6LB in accordance with the terms of the application, Ref DC/2023/00540, subject to the conditions in the Annex A.

Procedural Matter

2. I note the description of development given on the application form and the very detailed description on the appeal form. In the banner heading and my formal decision above, I have used the description of development used on the decision notice as it provides a more accurate and succinct description of the proposed development.

Main Issue

3. The main issue in the appeal is the effect of the proposed development on the living conditions of nearby residents with particular regard to noise and disturbance.

Reasons

4. The appeal relates to a vacant unit at one end of a small retail centre, on the corner of Altway and Stowe Avenue. The wider area is predominantly residential. The nearest residential property to the premises is No 1 Stowe Avenue whose gable end faces the rear of the unit, across a vehicular access. There are also properties on the other side of Altway as well as on the far side of the Stowe Avenue junction.
5. The retail centre contains a wide range of uses including a number of uses that open in the evening. At the other end of the centre is a public house with a large outside seating area, and a Conservative Club that I am told holds regular events is located nearby on Lancing Drive. As such, the shopping centre

- and other nearby commercial uses already create noise and activity during the evening.
6. Whilst I have not been supplied with any details, it is likely that the former use of the premises as a card shop means it would have operated mainly daytime hours. It is proposed to use the unit as a small-scale café and bar, with a small outside seating area at the front of the unit. It is proposed the use would be open during the evening as well as the day, although the appellant has indicated that the outside seating area would not be used for the purposes of eating / drinking beyond 5pm.
 7. The shopping centre has 3 parking areas, providing around 23 spaces and there is a separate area to the rear where staff can park. Although I observed that the customer parking areas were well used, there were always spaces available. Whilst only a snapshot in time, I consider that customers for the proposed use would generally use these parking areas rather than the surrounding streets. Moreover, although open longer hours, it is unlikely that a small-scale café/bar would attract significantly more car-borne customers than a retail use. As a consequence, I am satisfied that there would not be undue inconvenience or disturbance to local residents arising from parking associated with the proposal.
 8. Conditions can be used to control the opening hours of the café/bar as well as the hours the external seating area can be used. They can also be used to control the noise levels from any music played within the premises. Given this, and that there are other uses within the centre that already open until the same time as is proposed for this use, I envisage that any noise and disturbance resulting from the proposed use, and the arrival or departure of clientele from the premises would be minimal in comparison with, and indistinguishable from, that associated with the other uses in the centre.
 9. In addition, it is not proposed to cook food on the premises, and this can be controlled by condition. As such, there would be no particular odours associated with the proposal. Ensuring that waste from the use is appropriately stored and managed can also be controlled by a condition. Given this, and the nature of the use, I see no reason why it should cause an increase in litter in the area.
 10. The unit is set back slightly from the immediately adjacent row of shops and the external seating area would extend no further forward than these units. The pavement at this point is of a sufficient width to ensure that the external seating area would not cause an obstruction to other users. Whilst people may choose to stand elsewhere to smoke, this would not necessarily block the pavement and would be no different from customers of other premises who may stand outside the unit to do the same. Nor is there any substantive evidence to show that the use of this area by smokers would pose a health risk to others.
 11. It is suggested that the use has the potential to increase anti-social behaviour. Although there is no substantive evidence that this would be the case, should it occur, matters can be addressed using other legislation. It has also been argued that there is no need for such a use as there are other such uses in the area. Whilst there are other drinking establishments, I saw no other cafes in the vicinity, and in any case, it is not the role of the planning system to prevent competition. Whether the proposal would be financially viable is a matter for

the owner and is not a reason that justifies refusing planning permission. In addition, there is no persuasive evidence that the proposal would lead to a loss of property values.

12. All in all, I consider that the proposal would not unacceptably harm the living conditions of nearby residents with particular regard to noise and disturbance. Accordingly, I find no conflict with Policies HC3, EQ2 and EQ10(1)a of the Sefton Local Plan (adopted April 2017) which require that, amongst other things, developments should not cause significant harm to the living conditions of neighbouring residents. Nor would it be contrary to paragraph 135f of the National Planning Policy Framework that require that developments should provide a high standard of amenity for existing and future users.

Conclusion and Conditions

13. For the reasons set out above I conclude the appeal should be allowed.
14. In addition to the standard implementation condition, I have imposed a condition specifying the relevant plans as this provides certainty. The other conditions are all necessary in order to protect the living conditions of nearby residents. However, I have changed the hours the outside seating area is allowed to be used so that it accords with the appellant's stated intentions and I have combined suggested condition 2 and 3 to avoid repetition.

Alison Partington

INSPECTOR

Annex A

Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted, including the outside seating area, shall be carried out in accordance with the following approved plans: Site Location Plan; Block / Site Plan; Existing Ground Floor Plan Drawing Number OFS-201AA-PP-CI-04-2003-001 Rev A; Proposed Ground Floor Plan Drawing Number OFS-201AA-PP-CI-04-2003-002 Rev A; and Proposed Site Layout Plan Drawing Number OFS-201AA-PP-CI-04-2003-003 Rev A.
- 3) The use hereby permitted shall only take place between the following hours: 08:00 to 23:00.
- 4) The outdoor seating area shall not be used, and shall be removed from the external pavement area, outside the hours of 08:00 to 17:00.
- 5) No live, amplified or recorded music or entertainment shall take place within the premises above a level of LAeq 65dB, 10 minutes, measured 1 metre from any instrument, speaker or wall located within the premises.
- 6) No live, amplified or recorded music, or live entertainment shall take place outside of the premises.
- 7) No cooking, with the exception of warming or reheating, shall take place on the premises without appropriate extraction facilities first being installed. Prior to the installation of any such plant or equipment a written scheme of noise control, and detail of control of odours, for the proposed plant and equipment shall be submitted to, and approved in writing by, the local planning authority. The approved scheme shall thereafter be operated and maintained in accordance with the approved details for as long as the use continues.
- 8) Prior to the change of use of the building hereby permitted, a waste management plan shall be submitted to, and approved in writing by, the local planning authority.