



Appeal Decision

Site visit made on 18 June 2024

by Tamsin Law BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 July 2024

Appeal Ref: APP/F0114/W/23/3332651

The Bird, 18 - 19 Pulteney Road, Bathwick, Bath, BA2 4EZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Kaleidoscope Bird Limited against the decision of Bath and North East Somerset Council.
 - The application Ref is 23/02673/VAR.
 - The application sought planning permission for the erection of an outdoor terrace at the rear of the hotel without complying with a condition attached to planning permission Ref 23/01698/FUL, dated 7 July 2023.
 - The condition in dispute is No 4 which states that: The use of the development hereby approved shall be limited to between the hours of 8am - 9:30pm (Sunday - Wednesday) and 8am - 10pm (Thursday - Saturday) and shall not be used outside of these hours. No customer shall be served or remain within the outside terrace hereby approved outside of these hours.
 - The reason given for the condition is: To safeguard the amenities of nearby occupiers in accordance with Policy D6 of the Bath and North East Somerset Placemaking Plan.
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Decision

1. The appeal is dismissed.

Main Issue

2. The appeal seeks permission to carry out the development without complying with condition 4. This restricts the hours that outdoor terrace can be used. The Council imposed this condition to safeguard the living conditions of nearby residents. The appellant would like to extend the hours of use. Accordingly, the main issue of the appeal is the effect that varying the opening hours of the use of the terrace would have on the living conditions of neighbouring residents.

Reasons

3. The existing permission allows the terrace to be used until 2130 on Sundays - Wednesday and until 2200 on Thursday - Saturday. The proposal is to extend the hours of use of the terrace to 2200 on Sunday - Wednesday and 2300 on Thursday to Saturday.
4. The property has some locational benefits in that there is no residential development immediately to the south, east and west. No 17 Pulteney Road adjoins the appeal site to its north. It is a large semi-detached building that has been split in to flats with a residential garden that runs the length of its boundary with the appeal site. I noted at my site visit, during the mid-morning, that there is a moderate background noise level from traffic on the surrounding

- road network. I acknowledge that this is a snapshot in time and that at other times the background noise level may be different.
5. I accept that the site is located close to a relatively busy road and located in a city. However, the area does not have the city centre amenities, such as late-night take aways, public houses, restaurants etc that are characteristic of areas closer to the city centre. The area is characterised by large open spaces, roads, and residential buildings. As such, residents of nearby buildings would expect less disturbance than being located in the centre of Bath, which has more late-night uses.
 6. The appeal site comprises a large, detached building, being used as a hotel. To the rear of the hotel is a terrace, which from evidence appeared to have previously been part of the car park. The terrace comprises a number of seats, tables, lighting, heaters, and landscaping.
 7. I am not aware of any previous outdoor seating opportunities prior to the construction of the terrace area. Whilst the appellant notes that the premises licence allows for outdoor sale and consumption of alcohol for longer hours, it is reasonable to conclude that customers would likely only use outdoor areas where there are opportunities to sit and socialise. The previous use of the terrace area as a car park would likely not have been as attractive an area to socialise as the current terrace. The introduction of the terrace has served to increase the restaurant / drinking area of the hotel, which in turn would intensify the use of this area by customers.
 8. The Council's Environmental Health Officer objects to the proposal due to the proximity of residential premises and the potential for noise disturbance from both customers using the terrace. Residents of a neighbouring property have raised concerns. It is suggested that they already experience unacceptable levels of noise and disturbance on an evening.
 9. The appellant has submitted a Hotel Operation and Dispersal Plan: External area which notes that no loud speakers or amplified music would be played outside; the sale of alcohol be limited to 1000 – 2300; noise levels would be monitored with guests asked to lower noise or leave; glasses and kitchenware will be monitored to reduce clearing after operating hours; notices displayed to respect neighbours; number of guests on terrace reduced from 200 and a decibel meter installed to monitor noise levels.
 10. If unacceptable noise is noted, guests may be asked to leave. This would not stop potential disturbance occurring and may only serve to stop such guests from returning. The dispersal plan reflects a genuine desire on the part of the appellant to ensure that neighbours are not inconvenienced. But, as the plan largely indicates responses to disturbance rather than stopping it happening, harm to the living conditions of nearby residents could still occur.
 11. The terrace is located adjoining the garden area of No 17, and close to its rear and side elevation windows. No 17 has large windows which look towards the premises. Activity outside the hotel, late at night, would be noticeable within these rear and side facing rooms, particularly in summer if the windows were open.
 12. I have had regard to the appellants comments regarding the viability of the business, however I have not been provided with evidence that the business is

suffering with the current operating hours or how the extended hours would improve this. As such, I can only give this limited weight.

13. Given that the lack of other commercial activities in the immediate vicinity, the introduction of later opening and activity in such close proximity to No 17, would result in levels of noise and disturbance from customers that I consider would be harmful to the living conditions of those residents. I conclude therefore that the proposal would conflict with Policy D6 of the Bath and North East Somerset Local Plan (2014) which, amongst other things, requires that development does not cause significant harm to the amenities of existing occupiers. It would also be at odds with paragraph 135 of the National Planning Policy Framework which seeks to ensure there is a high standard of amenity for existing users.

Other Matters

14. As the proposal lies within the Bath Conservation Area (CA), I have had special regard to section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act). Neither party have raised this as a concern during the appeal. Based on the evidence before me, including the scale of the development and the fact that the development would not alter the external appearance of the building or the terrace, I am satisfied that the proposal would have a neutral effect on, and therefore preserve, the character and appearance of the CA.

Conclusion

15. For the reasons given above the appeal should be dismissed.

Tamsin Law

INSPECTOR

