



Appeal Decision

Site visit made on 2 July 2024

by L C Hughes BA (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 July 2024

Appeal Ref: APP/Z4310/W/24/3341563

89-91 Walton Vale, Liverpool, Merseyside L9 4RQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a grant of planning permission subject to conditions.
 - The appeal is made by Mr Sean Johnson, Aintree Gin Ltd. against the decision of Liverpool City Council.
 - The application Ref 22F/2566 was approved on 12 March 2024 and planning permission was granted subject to conditions.
 - The development permitted is to use part of ground floor as licensed bar and carry out associated shopfront alterations.
 - The condition in dispute is No 2 which states that: The premises shall not be in use outside the following hours:- 08.00am and 11.30pm.
 - The reason given for the condition is: To ensure that nearby occupiers are not adversely affected by the development.
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Decision

1. The appeal is dismissed.

Background and Main Issue

2. A licensed bar approved under planning application 22F/2566 has been operating from the appeal site. Condition 2 of that permission restricts the opening hours of the premises to between 08.00am and 11.30pm.
3. The appellant seeks to extend the opening hours of the bar to between 08.00am and 12.30am. This would allow serving under the licencing laws until 12.00am with a further 30 minutes cleaning and closing time until final omission of customers at 12.30am.
4. The main issue is the effect that varying the opening hours of the bar would have on the living conditions of neighbouring occupiers.

Reasons

5. The appeal site is located on a busy arterial route to the city. The bar is located within a three-storey parade of shops that comprises various uses, including commercial, retail, food and drink establishments and residential. The site comprises a ground floor unit. The upper floors are currently the subject of a planning application for use as Airbnb/guest house accommodation. The appeal site is on a corner with Warbreck Avenue, which is a terraced street home to a large residential population.
6. The appeal site is located within an area designated as Walton Vale District Centre. The Liverpool Local Plan 2013-2033 (2022) (LP) identifies that District

Centres will be the primary focus for development and investment in shops services, leisure and community uses outside the city centre.

7. There are a number of other food and drink establishments, including restaurants and bars along this stretch of Walton Vale, which suggests that there is a vibrant nighttime economy in the locality. The appellant contends that other businesses in the vicinity are open later than the appeal premises, which is unfair and potentially economically crippling. However, whilst other premises may be open later, I have no substantial information as to whether or not these affect the living conditions of surrounding residents. Moreover, the Council indicate that one of these businesses (The Raven) is a longstanding use and it is not known what planning conditions the premises must comply with. The Raven is also not as close to residential properties as the appeal premises. Another (The Vale Bar) has planning approval and conditions that pre-date the adopted local plan, and has similar opening hours to the appeal property. I note that a planning application for a restaurant and bar at 80 Walton Vale has recently been approved that has restricted opening hours which are the same as that at the appeal site.
8. Given that the premises are in the District Centre, residential occupants would expect a degree of late-night activity and some disturbance and noise at night would be likely. However, it is also a reasonable expectation that residents should have some respite from disturbance. Given the proximity of the site to neighbouring dwellings, the residents of these properties would be sensitive to various sources of noise and disturbance associated with the approved use, including general conversing, chatter from patrons smoking outside, opening and closing of car doors, and engines running when dropping up or picking up customers. The approved opening times would ensure that the level of noise and disturbance would unlikely have a significantly harmful effect on the neighbouring residents, as it would cease at a reasonable time.
9. During the early hours of the morning residents would expect a reasonable level of peacefulness. Therefore despite being located within a busy area for nighttime activity, such noise and disturbance would be more discernible and could disturb neighbouring residents sleep. Given the bar serves alcohol, it is likely that some patrons may be rowdy, which could increase the level of noise and exacerbate the harm caused to neighbouring residents through noise and disturbance.
10. I recognise that the appeal premises are located on a busy road and near a taxi rank. I noticed during my site visit that there was traffic noise dominating the soundscape in the locality of the bar, and there was a fairly steady stream of traffic passing by. Whilst the traffic noise is likely to be audible even during the evening hours, traffic flows along the road and the associated traffic noise would decline somewhat during the early hours of the morning. Any noise as a result of the extended opening hours is more likely to be noticeable at this time, and as such would be more likely to disturb neighbouring occupiers during the early hours of the morning.
11. I acknowledge that the appellant has worked hard to address problems, has a management plan, and that other conditions have helped to control noise. However, even a well-run bar would result in a degree of noise and disturbance outside the building. Even though staff would encourage customers to leave quietly and orderly, ultimately staff cannot control the behaviour of patrons,

and their behaviour outside of the premises could lead to noise and disturbance which would harm the living conditions of neighbouring occupiers at a time when they could reasonably expect peace and quiet within their homes. Whilst there is a public house in the nearby vicinity which stays open later than the appeal premises, this is not as close to neighbouring properties as the appeal premises and as such noise from that business and its patrons is less likely to directly disturb neighbouring occupiers.

12. I understand that the business holds a premises licence with permitted hours for indoor music and the sale of alcohol until midnight, with a condition requiring patrons to be off the premises by 12.30am. However, planning and licensing Acts are different forms of legislation and can consider different matters. The premises licence does not automatically lead to the conclusion that the proposal would also be acceptable in planning terms, and does not outweigh the harm that I have identified above.
13. Whilst I have no substantive evidence that the current opening hours are potentially economically crippling, I accept that there would be some benefits to the extended opening hours in terms of increased profitability in a difficult economic climate. However, the benefits in this instance are outweighed by the harm to the living conditions of neighbouring residents.
14. I therefore conclude that the variation of opening hours would harm the living conditions of neighbouring occupiers. This would be contrary to policy SP4 of the LP which seeks to ensure that proposals for food and drink uses should have no adverse impact on residential amenity. Therefore condition 2 is necessary and should be retained unaltered.

Conclusion

15. For the reasons given above, I conclude that the appeal should be dismissed.

L C Hughes

INSPECTOR