



Appeal Decision

Site visit made on 15 July 2024

by J Reid BA(Hons) BArch(Hons) RIBA

an Inspector appointed by the Secretary of State

Decision date: 22 July 2024

Appeal Ref: APP/C3810/W/23/3332996

Rocks Bar & Restaurant, 41-43 High Street, Bognor Regis PO21 1RX

- 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 Mr Carl Turney of Slades Bar against the decision of Arun District Council.
 - The application Ref is BR/41/23/PL.
 - The application sought planning permission for Change of use of existing Class A3 restaurant & cafe to Class A4 drinking establishment without complying with conditions attached to planning permission Ref BR/73/16/PL, dated 8 August 2016.
 - The conditions in dispute are Nos 3 and 4:
Condition 3 states that: The Class A4 Drinking Establishment shall only be open between the hours of 10:00 and 23:00 on Monday to Wednesday, 10:00 to midnight on Thursday, Friday & Sunday and 10:00 to 01:00 on Saturdays.
Condition 4 states that: The outside seating area shall be open between 10.00 and 22.00 but between 21.00 and 22.00, the outside seating area shall only be used for those who are seated for a meal or who are smoking. There shall be no drinks in the outside seating area after 22:00.
 - The reasons given for the conditions are:
Reason for Condition 3: To protect the amenities of occupiers of adjoining properties in accordance with Arun District Local Plan policies GEN7, GEN32 & GEN33.
Reason for Condition 4: To safeguard the amenities of nearby residential properties in accordance with Arun District Local Plan policies GEN7, GEN32 & GEN33.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Carl Turney of Slades Bar against the decision of Arun District Council. This application is the subject of a separate Decision.

Preliminary matters and main issue

3. The proposal seeks to increase the opening hours controlled by Condition 3, and to remove Condition 4, which controls the hours during which the outside seating area is open to customers.
4. The appellant's representations, including its noise impact assessment (NIA), refer to an application for a rooftop terrace and related bar. Little information about that proposal has been put to me, and as that proposal is not the subject of the appeal before me, I shall not consider it.

5. The main issue is whether Conditions 3 and 4 are necessary and reasonable to protect the living conditions of the residential occupiers of 39 High Street, regarding noise and disturbance.

Reasons

6. The appeal site is situated within a secondary retail frontage of the Town Centre and within an Economic Growth Area defined in the Arun Local Plan 2011-2031 (LP). The site includes the terraced part single storey and part 2 storey appeal building, which has a shallow outdoor seating area by its frontage on the south east side of the High Street. The taller part of the building faces Belmont Street at the back. The appeal premises are only accessible to customers from the High Street.

Condition 3

7. Most of the ground floors of the nearby buildings in the High Street include commercial and other town centre uses, but the upper floors of some nearby buildings include residential uses, including the upper floor of 39 High Street, which is next door to roughly north east, and which includes windows in its front and back. There are other residential occupiers in the upper floors above the frozen food store on the opposite side of the street to roughly west of the outdoor seating area. There are also other residential uses in the nearby streets, including the mostly 5 storey flats at Mountbatten Court in Belmont Street, which lies beyond its garages behind the appeal premises.
8. The ground floor of the premises includes the main bar at the front and a function room, which can be separated from the main bar, at the back. Both the main bar and the function room include television screens. The noise and activity that would reasonably be expected to be related to the premises would include amplified sound, such as recorded music and televised sports commentary, related customer noise and activity, sound from all internal sources escaping when doors and/or windows are opened, plant noise, such as kitchen extractors, mechanical heating, ventilating and/or air conditioning plant, intermittent bangs and clatters of delivery and refuse/recycling activity, and traffic noise and conversations related to the comings and goings of customers and staff, some of which would be likely to start and finish before and after the premises' opening hours.
9. The opening hours controlled by Condition 3 allow the business to open to customers from 1000 hours on any day, but Condition 5 allows deliveries and despatches to and from the site to take place on most weekdays only between 0800 hours and 1800 hours to protect the living conditions of the nearby residential occupiers. So, even if the pre-opening and post-closing noise and activity within the site, such as plant noise, refuse/recycling disposal, cleaning, and departures of staff were to be kept reasonably quiet, the nearby residential occupiers would only have roughly 9 to 11 hours respite from noise and disturbance related to the operation of the premises on most calendar days, and that comparatively short respite would occur at different times during the week. That respite could be reduced to roughly 8 to 10 hours if deliveries and despatches were to occur between 0800 hours and 1000 hours on most weekdays, when other noise and activity related to other nearby High Street premises would also reasonably be expected.

10. The occupiers of the adjacent town centre flat would reasonably expect to experience more noise and disturbance than those living in a suburban area, especially so in the rooms at the front of their home, which is also subject to traffic noise from the road. Even so, the modest period of relative respite from noise and disturbance related to the operation of most of the business in most weekday mornings between 0800 hours and 1000 hours would provide some relief from the impact of its variable opening hours on most of every 24 hour period throughout each year.
11. The proposed opening hours would allow the premises to open to customers an hour earlier every day, and whilst the closing time on most Sundays would not change, the proposal would allow the business to stay open for at least one more hour in the night, or in the early morning following, every Monday, Tuesday, Wednesday, Thursday, Friday and Saturday. As the increased opening hours would reduce the periods when nearby occupiers could reasonably expect relatively undisturbed sleep to roughly 7 to 9 hours, or to roughly 7 to 8 hours if deliveries and despatches were to occur between 0800 hours and 1000 hours on most weekdays, and as the timing of those periods would vary, the living conditions of the nearby residential occupiers would not be acceptable.
12. As no information about the controls, if any, on the timings of deliveries and despatches related to the other nearby town centre uses has been put to me, and there is nothing to show that all despatches and deliveries from and to the site could start after 1000 hours on most weekdays, it would not be necessary or reasonable to vary the hours controlled by Condition 5.
13. The Council has not raised concerns about the proposed earlier opening hours from 0900 hours to 1000 hours. However, as that would unacceptably erode the nearby occupiers' respite from most noise and disturbance related to the premises, especially so at most weekends, it would harm their living conditions.
14. Whilst the NIA identifies the front and back of the adjoining upper floor flat as the 2 nearest noise sensitive receivers, it explains that it is designed to address noise breakout from amplified music within the bar, and that its scope does not extend to general operational noise such as that arising from customers arriving at and leaving the establishment. The NIA adds that to reduce noise emissions, the maximum noise level within the restaurant (that is, the main bar) should be reduced, particularly during the proposed extended hours, and that the resulting noise limit should be verified by the appellant to confirm that the noise level is suitable for the operation of the premises. So, because the NIA does not deal with all sources of noise related to the operation of the premises, and it has not been shown that the proposed reduced sound levels would be acceptable for the operation of the business, the suggested condition for the premises to be operated in accordance with the NIA's recommendations would not overcome the harm that the proposal would cause.
15. Whilst the condition is said to have been imposed before the change of use took place, the Council's evidence includes a history of noise complaints related to the premises since then, with the last noise complaints being received in roughly May 2022 detailing loud music at night, including sound transfer entering domestic premises, noise from customers leaving the premises, shouting and the occasional fight. The Council adds that there has also been a history of licencing complaints against the premises.

16. As noise related to the related traffic and activities of customers departing from the premises, and perhaps lingering in the High Street, would occur at times when the background noise levels are lower, it would be likely to disturb the nearby residential occupiers. However, because that noise and disturbance would occur outside the site, it could not be controlled by condition.
17. The appellant says that the proposal would resolve the disparity between the opening hours allowed by the planning permission and the current premises licence, which is subject to annual or more frequent review. However, as the proposal would allow opening later than the times permitted by the licence, and it would allow closing later than permitted by the licence on most Mondays, Tuesdays and Wednesdays, and in the early mornings following most Fridays and Saturdays, the hours would not be the same. Moreover, as planning and licencing are subject to different legislation and are assessed against different criteria, their hours would not be expected to be the same. So, this matter attracts little weight.
18. Because the proposed opening hours would unacceptably diminish the periods when the nearby residential occupiers would reasonably expect some respite, the proposal would be contrary to LP Policy D DM1 which aims for development to have minimal impact to occupiers of nearby properties and land, LP Policy QE SP1 which aims to ensure that development does not have a significantly negative impact upon residential amenity, and the Framework which seeks a high standard of amenity for existing and future users.
19. As the existing opening hours controlled by Condition 3 represent an acceptable balance between support for the leisure and recreational activities enjoyed by residents and visitors to the District and the nearby occupiers' living conditions, the condition is necessary and reasonable to protect the living conditions of the residential occupiers at 39 High Street. So, I shall not remove or vary Condition 3.

Condition 4

20. The south west side of the outdoor seating area at the front of the premises can be closed off with bifold doors, but the north east side is open, and it is close to the upper floor windows in the front of the neighbouring flat. There are no other outside areas at the premises. So, after 2200 hours, customers wishing to smoke would need to leave the premises and return when they have finished smoking if they wish. The proposal seeks to remove Condition 4 so that customers can sit outside at the premises until closing time.
21. Whilst the premises includes a kitchen and serves some food, it is a drinking establishment. There are no details of the times when food is served before me, or evidence that the outdoor seating area would be desirable for outdoor dining throughout each year. So, there is a reasonable likelihood that, at times, the outdoor area would be mainly used by customers drinking and/or smoking. As those customers and/or staff would need to go in and/or out of the doors to order and/or collect and/or deliver drinks, opportunities for disturbance due to noise escaping from the premises would be increased at the later times when the outdoor area cannot presently be used. The noise and activity associated with customers in the outdoor area interacting with each other, staff and passers-by would also continue in those later times.

22. However, it would not be reasonable for the adjoining flat's occupiers to have to keep their windows shut, especially so on warmer days and nights. So, due to the relationships between the outdoor area and the windows in the neighbouring upper floor flat, the additional noise and disturbance associated with customers and staff opening the doors, and their activity and interactions beyond the existing hours, would be likely to harm the nearby occupiers' living conditions.
23. The requirement for customers using the outdoor area to be dining or smoking in the last hour before it is closed is necessary to sustain the character and vitality of the town centre, necessary to meet the reasonable needs of smokers, and reasonable to ensure that the outdoor area is available to customers wishing to smoke and/or eat before it is closed for the evening. So, I shall not remove that part of the condition.
24. So, the proposed removal of the condition would be contrary to LP Policy D DM1 which also aims to protect the character of the site and its surroundings, LP Policy QE SP1, and the Framework. Thus, as the condition is necessary and reasonable to protect the living conditions of the residential occupiers at 39 High Street, I shall not remove or vary Condition 4.

Other matters

25. The premises are said to have been operated since June 2022 in accordance with the hours on the premises licence without complaint, but complaints had been made before then. Moreover, as nearby residents might not make complaints for a variety of reasons, that is not sufficient to show that the related noise and disturbance was acceptable. Most staff have changed since roughly June 2022, but as planning permission runs with the land, and as a future occupier could run the premises in a different way, for the reasons given above, the conditions in dispute are necessary and reasonable.
26. Whilst planning policies should support the role that town centres play at the heart of local communities, by taking a positive approach to their growth, management and adaptation, LP Policy RET SP1 which seeks the sustainable economic growth and social wellbeing of town centres and LP Policy TOU SP1 were not concerns of the Council in its reasons for refusal. I see no reason to disagree. It is also a well-established principle that the advice of its officers cannot bind the decision of the Council.

Conclusion

27. Therefore, I consider that Conditions 3 and 4 are necessary and reasonable to protect the living conditions of the residential occupiers of 39 High Street, regarding noise and disturbance.
28. I have found that the proposed variation of Condition 3 and the proposed removal of Condition 4 would be contrary to the Development Plan when taken as a whole. The other considerations in this case, including the Framework, do not outweigh that conflict.
29. For the reasons given, the appeal should be dismissed.

J Reid

INSPECTOR