



Appeal Decision

Site visit made on 8 October 2024

by Robert Naylor BSc (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 October 2024

Appeal Ref: APP/V1505/W/23/3334245

The Barge Inn, High Road, Vange, Essex, SS16 4ND

- 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 Husman Rafiq against the decision of Basildon Borough Council.
 - The application Ref is 23/00703/VAR.
 - The application sought planning permission for a change of use of the existing public house (Sui Generis) into a community centre and place of worship (Class F) and stopping up of a section of the highway without complying with a condition attached to planning permission Ref 21/00649/FULL, dated 17 September 2021.
 - The condition in dispute is No 10 which states that: The hours of opening shall be restricted to 7am and 11pm daily.
 - The reason given for the condition is: To protect the amenities of neighbouring occupiers.
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Decision

1. The appeal is allowed, and planning permission is granted for a change of use of the existing public house (Sui Generis) into a community centre and place of worship (Class F) and stopping up of a section of the highway at The Barge Inn, High Road, Vange, Essex, SS16 4ND in accordance with the application Ref 23/00703/VAR, without compliance with condition number 10 previously imposed on planning permission Ref 21/00649/FULL, dated 17 September 2021 and subject to the conditions in the attached schedule.

Applications for costs

2. The application for costs made by the appellant against the Council is the subject of a separate decision.

Preliminary Matters

3. On 30 July 2024 the Government published a consultation on proposed reforms to the National Planning Policy Framework (the Framework) and other changes to the planning system. Whilst a direction of travel has been outlined within the Written Ministerial Statement, which is a material consideration, the changes to the Framework can only be given limited weight at this stage, given that no final document has been published.
4. In any event, the policies that are material to this decision are not subject to any fundamental changes, and I am satisfied that this has not prejudiced any party. Consequently, in reaching my decision I have therefore had regard to

the Framework as published in December 2023, and any reference to paragraph numbers are to this version.

Background and Main Issue

5. Planning permission¹ has been granted at the site for a change of use of the existing public house (Sui Generis) into a community centre and place of worship (Class F) and stopping up of a section of the highway. Condition 10 attached to the permission related to the hours of operation restricting the use to between 0700 and 2300 daily.
6. A temporary permission² was granted for a variation to condition 10 to allow additional hours of operation to accommodate Farj (morning prayers) prior to the 0700 start time, and for additional prayer time during Ramadan after the 2300 curfew, for a period of a year. The temporary consent allowed for the Council as Local Planning Authority to assess any impacts the extended hours from 0400 until 0030 would have on the amenities of the neighbouring occupiers.
7. During this assessed period no noise or disturbance complaints were received by the Council. Following the expiration of the temporary consent, a full planning application was submitted to extend the hours of operation on a permanent basis. Contrary to officers' recommendations, the Council's Planning Committee resolved to refuse permission as noise and disturbance during unsocial hours would have a detrimental impact on the amenities of the nearby residents.
8. Taking the above background into consideration, the main issue therefore is whether the variation of condition 10 to provide extended operational hours between 0400 and 0030 daily would have an unacceptable impact on the living conditions of the nearby residents with specific regard to noise and disturbance.

Reasons

Living conditions – noise and disturbance

9. The principle of the development has been established through the original permission subject to conditions to protect the amenity of the local residents. These conditions included, amongst others, restrictions on audio or amplified sound equipment inside and outside the building; strict accordance with the approved noise impact assessment³; restrictions on lighting; the submission of management and travel plans and the hours of operation between 0700 and 2300 daily.
10. However, the hours of operation restricted by condition 10, prevented the community centre from being used as an appropriate place of worship given that it precluded prayer time for Farj (between dawn and sunrise), and additional evening prayer time required during the period of Ramadan.
11. As such, the elapsed temporary permission was considered an appropriate measure to provide a trial run in order to assess the effect of the additional hours of operation on the living conditions of the nearby residents in

¹ Basildon Borough Council Planning Ref: 21/00649/FULL

² Basildon Borough Council Planning Ref: 22/00112/VAR

³ Noise Impact Assessment (RP01-20445) and Addendum to Noise Impact Assessment (AD01-20445).

accordance with the National Planning Practice Guidance (PPG)⁴. The PPG further advises it will rarely be justifiable to grant a second temporary permission, with further permissions normally granted permanently or refused if there is clear justification for doing so.

12. From the information before me, it was evident during the temporary trial period that the Councils Environmental Health team received no complaints from local residents in respect to any noise nuisance or disturbance experienced from the site. This included 30 days of Ramadan and two Eid (festival) prayers, the busiest periods of use of the community centre during the calendar year. Furthermore, Essex Highways as the Local Highway Authority raised no objection to the scheme, concluding that it would not be detrimental to highway safety, capacity or efficiency. This highlights that the current protective measures are effective in providing suitable living conditions for nearby residents with specific regard to noise and disturbance, even during the temporary period when the extended hours were in operation.
13. I have no reason to doubt there is a perception of harm regarding the additional hours of operation, particularly during unsocial hours. However, this has not been substantiated by any evidence provided by the Council in defence of their reason for refusal, other than anecdotal third-party comments setting out their own experiences of limited and isolated incidents of disturbance when the site was in use. Nor has the Council provided any noise reports or evidence to support their suggestion that the resultant noise levels arising from the development would result in undue harm to living conditions of local residents.
14. Based on the evidence before me, I conclude that the hours of operation as proposed by the appellants would not lead to significant harm to the living conditions of nearby residents in respect of noise and disturbance.
15. As such the variation of condition 10 to change the opening times from 0400 until 0030 daily would not conflict with the Framework which seeks to achieve a high standard of amenity for existing and future users of land and property, and to avoid noise giving rise to significant adverse impacts on quality of life. The Council's decision does not refer to any development plan policies, but this does not negate my conclusions in respect of the Framework.

Other Matters

16. I have had due regard to the Human Rights Act 1998 (HRA) and the Public Sector Equality Duty (PSED) under the Equality Act 2010. This means having due regard to the three aims of the HRA to eliminate discrimination, advance equality of opportunity and foster good relations (s149(1)). Religion or belief is the protected characteristic of particular relevance to this appeal.
17. I have found that the proposal which is intended to meet the needs of the South Essex Islamic community for a suitable place of worship would be acceptable, and it would help to further these aims. Similarly, there would be no interference with the appellant and wider South Essex Islamic community's qualified rights under Articles 8 and 9 of the Human Rights Act 1998 for respect for the home, private and family life, and freedom of thought, conscience and religion.

⁴ Paragraph: 014 Reference ID: 21a-014-20140306

Conditions

18. As this appeal relates to an application under Section 73, and I am only considering the disputed condition 10, it is necessary to reimpose all relevant conditions from the original permission. However, I have removed condition 1 as this is no longer necessary, given that it relates to the commencement of the development.
19. In respect to the other conditions to be reattached, the Council have provided a list of those attached to the original permission that have been subject to subsequent applications to discharge details. The Council have amended these to reflect the details which have been approved under separate application references. These are non-disputed and appear to still be relevant and as such I have attached the amended conditions, including the varied condition 10 subject to this appeal.

Conclusion

20. For the reasons given above I conclude that the appeal should succeed. I will grant a new planning permission varying the disputed condition and restating those undisputed conditions that are still subsisting and capable of taking effect.

Robert Naylor

INSPECTOR

SCHEDULE OF CONDITIONS

- 2) The development hereby permitted shall be carried out in accordance with the drawings numbered BAR-01 (Location Plan) and BAR-12 (Proposed Basement Plan) received at the local planning authority offices on 20 April 2021; the revised drawings numbered BAR-08, BAR-12 (Proposed First Floor Plan), BAR-13 (Proposed Front and Side Elevations), BAR-14 (Proposed Side and Rear Elevations), received at the local planning authority's offices on 7 June 2021; and the revised drawing numbered BAR-03 (Proposed Site Plan) received at the local planning authority offices on 16 July 2021.
- 3) The vehicle parking area and associated turning areas as shown on the approved drawing numbered BAS-03 shall be retained in this form as all times. The vehicle parking spaces shall not be used for any purposes other than the parking of vehicles that are related to the use of the development unless otherwise agreed in writing with the Local Planning Authority.
- 4) Cycle parking facilities as detailed in the photographs received at the Council Offices on 4 September 2023, shall be permanently retained on the site as previously agreed under reference 23/00498/COND.
- 5) Any proposed boundary fence adjacent to the two-wheeler parking shall be sited clear of the public maintainable highway. The refuse and recycling storage, including proposed management arrangement shall be retained on the site in the locations as detailed in the photographs received at the Council Offices on 4 September 2023, and located in the

- position as shown on the drawing numbered BAR-03 (Proposed Site Plan) received at the Council Offices on 24 May 2023, taken together with the 'Annual Duty of Care Waste Transfer Note' received at the Council Offices on 3 May 2023, as previously agreed under reference 23/00498/COND.
- 6) The refuse and recycling storage, including proposed management arrangement shall be retained on the site in the locations as detailed in the photographs received at the Council Offices on 4 September 2023, and located in the position as shown on the drawing numbered BAR-03 (Proposed Site Plan) received at the Council Offices on 24 May 2023, taken together with the 'Annual Duty of Care Waste Transfer Note' received at the Council Offices on 3 May 2023, as previously agreed under reference 23/00498/COND.
 - 7) The two electric vehicle charging points as detailed in the document titled 'Intelligent EV Charger 7kW AC ICSW7C received at the Council Offices on 4 September 2023, as located in the positions as shown on the drawing numbered BAR-03 (Proposed Site Plan) received at the Council Offices on 24 May 2023, shall be permanently retained thereafter, as previously agreed under reference 23/00498/COND.
 - 8) The development shall be carried out in accordance with the revised Travel Plan 'Travel Plan Update' Ref: 11316 Revision 3.0 report prepared by Patrick Parsons, dated September 2023, received at the Council Offices on 22 September 2023. The monitoring of the effects of the measures identified in the Travel Plan shall be submitted to the Local Planning Authority following the first year's occupation of the building. Thereafter the approved plan shall be subject to monitoring and updated, as appropriate, should the number of users exceed the figures outlined in the supporting Travel Plan and Transport Statement.
 - 9) The applicant shall ensure that records of numbers of individuals using the centre together with the associated vehicular trip generation shall be kept and shall not exceed more than 100 persons at any one time, to permit the Local Planning Authority to monitor attendance levels and vehicular movements. Those records shall be made available to the Local Planning Authority on request.
 - 10) The hours of opening shall be restricted to between 4am and 00.30am daily.
 - 11) No loudspeaker, amplifier, relay or other audio equipment shall be installed or used outside the building.
 - 12) The sound amplification equipment to be used in the premises shall be that previously agreed under reference 23/00498/COND.
 - 13) The development shall be carried out in accordance with the details set out in Noise Impact Assessment (RP01-20445) and Addendum to Noise Impact Assessment (AD01-20445).
 - 14) The windows installed have been carried out in accordance with details previously agreed under reference 23/00498/COND.
 - 15) Details of soft and hard landscaping previously agreed under reference 23/00498/COND.
 - 16) No internal works shall take place until:-

a) All fireplaces or fireplace surrounds have been fully recorded (including photographs) and these details are to be submitted to the local planning authority.

b) The removal of any fireplaces or surrounds shall not occur until this has been agreed in writing with the Local Planning Authority.

(No works to any fireplaces within the premises have been carried out, as outlined in the photographs received at the Council Offices on 3 May 2023., and previously detailed under reference 23/00498/COND.)

- 17) Prior to occupation or first use of the building hereby permitted the applicants has sought the approval of the Secretary of State under S.247 of the Town and Country Planning Act for the extinguishment of the highway within the land hatched green as shown in principle of the planning application drawing number BAS-03 prepared by London Consultants Ltd.
- 18) External lighting and security measures, including CCTV, shall be as detailed in the specification prepared by Soundselectric received at the Council Offices on 3 May 2023, and in the location set out on the Ground and First Floor Plans received at the Council Offices on 24 May 2023., previously agreed under reference 23/00498/COND.
- 19) The use shall be operated in accordance with the approved Travel Plan Update' Ref: 11316 Revision 3.0 report prepared by Patrick Parsons, dated September 2023, received at the Council Offices on 22 September 2023., previously agreed under reference 23/00498/COND.
- 20) Details of travel information offered to users of the premises shall be as set out in the Travel Plan Update' Ref: 11316 Revision 3.0 report prepared by Patrick Parsons, dated September 2023, received at the Council Offices on 22 September 2023., previously agreed under reference 23/00498/COND.
- 21) The fire strategy for this site shall be as detailed in the Fire Risk Assessment prepared by Jamie Choules dated 22 April 2023, taken together with the SEIT Fire Layout Plans received at the Council Offices on 24 May 2023, as previously agreed under reference 23/00498/COND.

END OF SCHEDULE