



Appeal Decision

Site visit made on 23 September 2024

by C Rafferty LLB(Hons), Solicitor

an Inspector appointed by the Secretary of State

Decision date: 5th December 2024

Appeal Ref: APP/V5570/W/24/3339678

Part Basement (restaurant), 190 City Approach, City Road, Islington, London EC1V 2QH

- 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 Graeme Hawkins against the decision of the Council of the London Borough of Islington.
 - The application Ref P2023/2844/S73 was approved on 26 February 2024 and planning permission was granted subject to conditions.
 - The development permitted is Section 73 Application to vary Condition 2 of Planning Permission 841340 dated 15/06/1984 to amend the hours of operation to 11:00 to 00:00 Monday to Thursday, Sunday and Bank Holidays and 11:00 to 01:30 (the following day) Friday and Saturday.
 - The condition in dispute is No. 2 which states that: Notwithstanding the hereby approved plans, the approved hours of operation are granted only for a limited period, being 12 months from the first commencement of the use. The temporary hours of operation approved are as follows: 11:00 to 00:00 Monday to Thursday, Sunday, and Bank Holidays and 11:00 to 01:30 (the following day) Friday and Saturday. 12 months after the commencement of the use and associated operating hours a further consent will need to be obtained to operate the use under the above hours for a longer period of time.
 - The reason given for the condition is: The temporary consent is such that the Local Planning Authority has a period to monitor noise and other operational management issues (noise and nighttime disruptions) in order to protect amenity of both residential premises that adjoin the site.
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Decision

1. The appeal is allowed and planning permission Ref P2023/2844/S73 for Section 73 Application to vary Condition 2 of Planning Permission 841340 dated 15/06/1984 to amend the hours of operation to 11:00 to 00:00 Monday to Thursday, Sunday and Bank Holidays and 11:00 to 01:30 (the following day) Friday and Saturday at Part Basement (restaurant), 190 City Approach, City Road, Islington, London EC1V 2QH granted on 26 February 2024 by the Council of the London Borough of Islington is varied by deleting condition no. 2 and substituting it for the following condition:

2) The hours of operation approved are as follows: 11:00 - 00:00 Monday - Thursday, Sunday, and Bank Holidays, and 11:00 - 01:30 (the following day) Friday and Saturday.

Preliminary Matters

2. Planning permission 841340 was granted for the retention of use of part of basement as an ale and port house serving hot food without complying with

condition 02 of the permission of 15 June 1984. This was subject to a condition which stated that the use shall not operate except between the hours of 11h00 and 23h00 on any weekdays, and 12h00 to 22h30 on Sundays and Bank Holidays.

3. The current application sought to vary those hours to 11h00 to 0h00 Bank Holidays, and 11h00 to 01h00 (the following day) Friday and Saturday, which would also regularise the error in omitting Saturday opening hours in the original permission. Planning permission P/2023/2844/S73 was subsequently granted, subject to numerous conditions. This included condition 02, which limited the aforementioned hours to a 12 month period from the first commencement of the use.

Main Issue

4. The main issue is the effect that varying the opening hours would have on the living conditions of surrounding residents with regard to noise and disturbance.

Reasons

5. The appeal site comprises a basement unit of a building on City Road. The immediate surrounds are primarily commercial in nature, with a range of units and uses, albeit that residential uses exist at the upper levels, including at the appeal building. The proposal would allow for the use of the site as an ale and port house serving hot food, with permanent operating hours of 11h00 to 0h00 Bank Holidays, and 11h00 to 01h00 (the following day) Friday and Saturday.
6. Numerous objections have been received from interested parties, including surrounding residents, that this would give rise to unacceptable impacts with regard to noise and disturbance. As such, the Council considers that limiting these hours to a 12 month period is necessary to allow for monitoring of noise and other operational management issues.
7. The proposal would allow for a permanent operation of the permitted use at hours when surrounding residents, even in a largely commercial setting, can reasonably expect a level of peace and quiet. Based on my observations and the comments received, the operation of the proposal has the potential to result in increased noise and disturbance to residents through the transmission of noise through the building, and the coming and going of patrons during night-time hours, including for smoking and vaping, with the potential for loitering outside the establishment.
8. Nevertheless, although the site is not currently occupied for the permitted use, it remains that there is an extant permission for this use. The proposed increased hours would represent a limited, additional period of operation of the permitted use at the site and, although a separate consideration, would align with the previous operator's premises licence.
9. A Noise Impact Assessment accompanied the application, which stated that the noise associated with the premises that has the potential for the greatest impact is patrons leaving at the end of the night. It found that, taking account of the average noise areas in the vicinity, the permanent extension of operating hours as proposed would have a negligible impact in this regard, and be unlikely to cause disturbance to nearby residents. While the Council's Statement of Case states that this assessment is not robust, limited

justification for this is given. In the absence of substantive, technical evidence to the contrary, I attach significant weight to the findings of this assessment.

10. The Noise Impact Assessment suggests a management plan. In this regard, condition no. 3 of planning permission P/2023/2844 relates to the submission to and approval by the Council of a detailed operational management plan prior to the commencement of the use proposed. Among other things this would include details on signs to request patrons to leave in a quiet manner and not to loiter in surrounding streets, and designation and control measures of any noise from any designated smoking and vaping areas. These measures would address the concerns raised in these regards, which the Council would have the opportunity to review, and refuse or approve accordingly.
11. Based on past experience of the use of the site, residents are also concerned about noise transmission within the appeal building itself. In accordance with condition no. 3, the operational management plan is also required to include sound insulation measures, control and levels of noise from any amplified music within the unit, and close down policy with amplified music shut-off. As set out above, the Council would have the opportunity to review these details prior to the commencement of the use proposed. In addition, condition no. 4 requires that no music or other amplified noise shall be audible outside the premises or transmit between floors up the building, and that a sound limiter shall be fitted and maintained at the main bar area.
12. Taking the above observations together, along with the commercial nature of the surrounds and the lack of objection from the Council's Public Protection Division (Noise Team), the permanent extension of the operating hours as proposed would not lead to significant noise and disturbance of surrounding residents. The amended condition would continue to restrict the operating hours to those outlined and would therefore still provide a reasonable degree of protection for the living conditions of nearby residents in this regard. The condition as amended would be necessary, reasonable, relevant to planning and the development, and sufficiently precise to be enforceable.
13. For the reasons given, varying the opening hours as proposed would not result in significant adverse effects to the living conditions of surrounding occupiers, with regard to noise and disturbance. As such, it would comply with Policies DH5, DM4.2, DM4.3, and PLAN1 of the Islington Local Plan Strategic and Development Management Policies 2023 insofar as they seek to ensure a good level of amenity is provided, including consideration and assessment of noise and the impact of disturbance.

Other Matters

14. Interested parties have also raised concerns regarding anti-social behaviour. However, there is limited substantive evidence before me in this regard. Nevertheless, the Council's Designing out Crime Officer has stated that the proposal is not contentious from a crime prevention perspective, and the operational management plan is to include details on security, including any additional proposed CCTV, and any additional external or security lighting. On this basis, I am satisfied that no such impacts would arise from the proposal.
15. Residents of the appeal property have referred to issues arising from squatters at the appeal site. However, the appeal before me relates to the proposed increased operational hours for the permitted use of the site which, as outlined

above, I have found would not result in significant adverse impacts on the living conditions of surrounding residents, with regard to noise and disturbance. My findings in this regard are also not altered by the availability of other bars and restaurants in the immediate and wider area.

16. I note that the appellant has stated that the proposed operator is a bar specialising in table shuffleboard and lane shuffle, and that interested parties have raised concerns regarding the management of other establishments by this operator. However, there is no guarantee that this would be the operator of the site. In any event, the appeal before me relates to the application site rather than other establishments, and conditions attached to the planning permission sufficiently address operational management issues.

Conclusion

17. For the reasons given above, I conclude that the appeal should be allowed and the planning permission varied as set out in the formal decision.

C Rafferty

INSPECTOR