



Appeal Decision

Site visit made on 19 February 2025

by D Cleary MTCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 March 2025

Appeal Ref: APP/U4610/W/24/3355382

Kasbah, Primrose Hill Street, Coventry CV1 5LY

- 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 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Ama Kullar against the decision of Coventry City Council.
 - The application Ref is PL/2024/0001523/RVC.
 - The application sought planning permission for the retention of covered structure over outside drinking, smoking and barbecue area without complying with a condition attached to planning permission Ref PL/2023/0002211/RVC dated 12 December 2023.
 - The condition in dispute is No.3 which states that:
Music can be played within the Garden area between the hours of 3pm-10pm on Saturdays or a Sunday before a Bank Holiday Monday for a maximum of 10 events a year, for a limited period of 12 months from the date of issuance, in strict accordance with the measures set out in:
Noise Management Plan - Kasbah-Nightclub-NMPv01-19_12_23
Environmental Noise Assessment - 22415-1 – Dated 9th Feb 2023
 - The reason given for the condition is:
The Local Planning Authority considers that a permanent planning permission is not appropriate in this case because of the nature of the use which would not accord with Policy DE1 of the Coventry Local Plan 2016. However, this permission is granted for a limited period only in the recognition of the particular circumstances of the proposal concerned.
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Decision

1. The appeal is allowed and planning permission is granted for the retention of a covered structure over outside drinking, smoking and barbecue area at Kasbah, Primrose Hill Street, Coventry CV1 5LY in accordance with the application Ref PL/2024/0001523/RVC, without compliance with condition number 3 previously imposed on planning permission Ref PL/2023/0002211/RVC dated 12 December 2023 and subject to the following conditions:
 - 1) The development shall be carried out only in strict conformity with the details shown on the approved plans and in the application documentation or contained in any approved amending documents unless otherwise agreed in writing with the local planning authority.
 - 2) Music can be played within the Garden area between the hours of 3pm-10pm on Saturdays or a Sunday before a Bank Holiday Monday for a maximum of 10 events a year, in strict accordance with the measures set out in:

Noise Management Plan - Kasbah-Nightclub-NMPv01-19_12_23
Environmental Noise Assessment - 22415-1 – Dated 9th Feb 2023

Preliminary Matters

2. The Government published a revised National Planning Policy Framework (the Framework) on 12 December 2024. Those parts of the Framework most relevant to this appeal have not been amended. As a result, I have not sought submissions on the revised Framework, and I am satisfied that no party's interests have been prejudiced by taking this approach.

Background and Main Issue

3. The appeal site has been subject to a number of planning applications relating to the retention of a covered structure over an outside drinking, smoking and barbecue area associated with the operations carried out at the appeal premises. From the information before me, planning permission was initially granted for the retention of the structure in 2009¹ (the original permission). This permission was subject to condition 2 which prohibited the playing of music within/adjacent to the structure.
4. The original permission was then varied by permission granted in December 2023² (the second permission) to allow for, in summary, music to be played for a maximum of 10 events a year, between the hours of 3pm and 10pm, on a Saturday or Sunday. The second permission included condition No.3 which limited the playing of music for a 12-month period only.
5. Finally, before the temporary permission expired, permission was sought to remove condition No.3 attached to the second permission. The Council subsequently refused this application. It is this decision which is the subject of this appeal. Therefore, the main issue is the effect of removing the condition on living conditions of the occupants of nearby residential properties with particular regard to noise and disturbance.

Reasons

6. The appeal site relates to a covered external drinking area which is used in connection with an established entertainment venue known as Kasbah nightclub. The canopy covering the area is large and includes a dual pitched roof design. This external area is surrounded by a mix of tall brick and blockwork walls and, in part, fencing. The surrounding area is mixed in character comprising a range of commercial, education and residential uses. The nearest residential properties are located on Swanswell Street, although there are other residential properties in the area. On my site visit, I observed that the area had a high level of activity associated with the surrounding uses. The mix of uses and level of activity are indicative of its edge of city centre location.
7. Condition No.3 states that *"Music can be played within the Garden area between the hours of 3pm-10pm on Saturdays or a Sunday before a Bank Holiday Monday for a maximum of 10 events a year, for a limited period of 12 months from the date of issuance"*, subject to compliance with various documents. This 12-month period has now expired and the appellant has sought to remove the condition to enable music to be played at the venue. A further condition on the planning permission

¹ 15919/L

² PL/2023/0002211/RVC

(condition No.2) has similar wording albeit without the 12-month limitation, it is not proposed to remove this condition.

8. The number of events which could occur would be limited to 10 a year. The frequency of events is not a significant number over the course of 12 months. Further, the limitation is for events to occur on Saturdays or Sundays only, with the latter being only before a Bank Holiday Monday. Finally, the events can only occur between the hours of 3pm and 10pm. These limitations heavily restrict when events can occur. Together, the limitations would not lead to an excessive number of events during unsociable times. In this regard, I am particularly mindful of the established nature of the venue, the mix of uses in the surrounding area and the level of activity at this edge of city centre location. These limitations ensure that “*an appropriate balance between competing and complimentary uses*” would be struck as advocated in the Coventry City Centre Area Action Plan (2017) (the AAP)³.
9. Notwithstanding the above, I note that there are residential properties within reasonably close proximity to the venue which may potentially be affected by noise and disturbance during the events. The occupants of these properties are noise sensitive receptors and the effect on these occupants ought to be given careful consideration, as the Council have done.
10. A Noise Management Plan (NMP) has been prepared⁴ which outlines the measures and actions which would be implemented. This includes notification of neighbours in advance of an event; a dedicated manned hotline during the event; measures to deal with, and respond to, any complaints received; staff briefing to ensure that they are aware of their responsibilities; and various measures for equipment checks and ongoing monitoring. Furthermore, it is highlighted in the NMP that it is a working document which would be developed in liaison with the Local Planning Authority.
11. The measures contained within the NMP, if fully implemented, provide sufficient additional safeguards to limit the effect of the living conditions of nearby residents during the events. The remaining condition No.2 would require the site to operate in accordance with the NMP. This is appropriate to ensure adherence and ongoing monitoring, and I am satisfied that this is enforceable. In the context of the surrounding environment, the infrequent number and reasonable timing of events, along with the measures set out in the NMP would all ensure that living conditions of nearby noise sensitive uses would not be adversely affected.
12. I acknowledge that complaints have been received during the initial temporary period and note that there is a dispute between the parties regarding the number of complaints and the actions taken. I do not have full details of the nature of these complaints. Nonetheless, I am satisfied that the frequency of events would be at an acceptable level, while the provisions of the NMP, are appropriate to reduce the likelihood of future complaints. In any event, the provisions of other environmental legislation give the Council the powers to investigate and, if deemed necessary, take appropriate action should a statutory nuisance arise.
13. Accordingly, I conclude that the removal of the condition would not have an adverse effect on the living conditions of the occupants of nearby residents by

³ Paragraph 15.11

⁴ Ref: Report No.2: Kasbah Nightclub – Noise Management Plan Revision 01: 19/12/23

reason of noise and disturbance. Therefore, the removal of the condition would result in a development which would comply with Policies DE1 and CO1 of the Coventry City Council Local Plan (2017) and Policy CC10 of the AAP. Together, amongst other things, these seek to ensure that development respects and is compatible with its surroundings, and is designed to minimise environmental impacts.

Conditions

14. I have imposed the remaining two conditions which were attached to planning permission PL/2023/0002211/RVC. The adherence to the approved plans and details is required for certainty. The condition limiting the number of events, when they can occur and adherence to the Noise Assessment and NMP is necessary in the interest of protecting the living conditions of nearby residents.

Conclusion

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

D Cleary

INSPECTOR