



Appeal Decision

Site visit made on 11 June 2025

by David Smith BA(Hons) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 June 2025

Appeal Ref: APP/L2250/W/25/3359503

133 Sandgate Road, Folkestone, CT20 2BL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by The Dracula Parrot against the decision of Folkestone and Hythe District Council.
 - The application Ref is 24/1762/FH.
 - The development proposed is a change of use from sui generis to a drinking establishment.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The details given of the proposed development on the application form are very fulsome but the abbreviated description above is sufficient to describe it.

Main Issue

3. This is the effect of the proposed use on the living conditions of neighbouring residential occupiers with particular reference to noise.

Reasons

4. The appeal premises are empty having last been used as an escape room. They are located within the shopping district of Folkestone Town Centre although towards its periphery. There are other retail and business premises nearby but a limited number serve the night-time economy. There are also residential uses in the area. The Council accepts that the appeal site has an established use under Class E of the Use Classes Order.
5. Policy RL1 of the Places and People Local Plan deals with the designated centres in the retail hierarchy. It makes no reference to the night-time economy but indicates that planning permission will be granted for the development of a range of town centres uses that add to vitality and viability. This is except where there would be conflict with other policies or environmental objectives. In this regard, Policy HB1 seeks to prevent an adverse impact on the amenity of neighbours.
6. The proposed drinking establishment would operate on the ground and first floors and within the basement. A garden area would also be provided at the rear adjacent to Pleydell Gardens. Conditions could be imposed to limit the hours of opening and to prevent the playing of live, recorded or amplified music. The appellant also refers to concessions made as part of the licensing process, including limiting use of the rear garden.

7. However, there are three residential properties within the building on the upper floors. According to the Council the proposed use would be immediately adjacent to those flats. Although the appellant refers to undertaking sound proofing, no details have been provided of the attenuation that could be achieved. The use of the first floor by customers would therefore be liable to be disruptive to the living environment of existing residents. Furthermore, the rear garden could be used as an outdoor drinking area in fine weather as well as for smokers. This would be in very close proximity to the doors and windows at Pleydell Court. The noise of human interaction between those focussed on an enjoyable evening out would be likely to be a direct source of nuisance to those nearby.
8. As well as the consequences of the proposal within the appeal site, the Council also mentions comings and goings at late hours, particularly of large groups. However, this is a town centre location where residents should reasonably expect a degree of activity at such times. Indeed, there is nothing to directly link the location of drinking establishments with incidents of anti-social behaviour or criminal damage. A local resident comments that over exuberant and poor behaviour is already witnessed at times. That said, there is no evidence that the proposal would lead to this occurring in the immediate vicinity of the appeal site or that the level of late evening activity in Folkestone has reached saturation point.
9. According to the appellant, the premises were previously a late night drinking establishment with an alcohol licence and live music events which operated until midnight. Although not corroborated neither is this claim refuted. However, there is no detail as to how long that use ran for, its precise nature including whether food was served, the frequency of the music events and whether it included an outdoor area or generated complaints. The past use of the site therefore does not form a sound basis on which to accept the proposal.
10. The premises could legitimately be used for purposes within Class E. This is defined as the sale of food and drink principally to visiting members of the public, where consumption is mostly undertaken on the premises. Whilst sharing some similar characteristics to the proposal, the nature of restaurant or café uses within Class E is inherently different as recognised by the Order. This potential 'fall-back' position therefore does not justify the proposed use.
11. The appellant raises the judgment in *Daniel Thwaites plc vs Wirral Borough Magistrates Court*. However, this was concerned with a licensing application relating to existing premises. Quite apart from the different legislative basis that caselaw was not concerned with a proposed use as here. It is perfectly reasonable, based on experience and common sense, to anticipate the manner in which a drinking establishment would be used and the likely implications for those living within the same building and nearby.
12. The Council raises the absence of a noise impact assessment. However, this decision does not turn on that point, particularly as it may have been difficult for one to be undertaken when the appellant did not hold the lease. Even if a condition were imposed requiring that a noise assessment be undertaken before the use commenced and suitable mitigation provided, this would not deal with the potential harm associated with the rear external area. Therefore, the use of conditions would not overcome the harm identified.

13. Whilst recognising that uses such as drinking establishments have their place in town centres, the proposal would be so near to existing residents that it would be likely to have a serious detrimental impact. On the basis of the evidence provided this objection could not be dealt with by conditions. As such, the proposed use would cause harm to the living conditions of neighbouring residential occupiers contrary to Policy HB1.

Other Matters

14. The appellant is critical of the Council given the vacillation that occurred over the need for a noise impact assessment and its alleged failure to work positively. Whilst understandably there is frustration about the way events have turned out, there is no reason to allow an otherwise unacceptable use due to what took place at application stage. Ventilation from the basement could be through the side wall into the alley where the former pizza kitchen extractor fans discharged. On the face of it, this would appear to be a reasonable solution.
15. No external changes are proposed and the use would be compatible with the general commercial activity along Sandgate Road. As such, the character and appearance of the Folkestone Leas and Bayle Conservation Area would be preserved.

Conclusion

16. The proposal conflicts with the development plan and material considerations do not indicate that a decision should be made other than in accordance with it. Therefore, for the reasons given, the appeal should not succeed.

David Smith

INSPECTOR