



Appeal Decisions

Site visit made on 2 September 2025

by **E Grierson BSc (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 19th September 2025

Appeal A Ref: APP/D1590/W/25/3367509

101, 97-99 Shaftesbury Avenue, Southend-On-Sea SS1 3AN

- 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 Mr Anjesh Patel against the decision of Southend-on-Sea City Council.
 - The application Ref is 25/00134/FUL.
The development is install 3No. AC units, extract flues with related screens to roof, door to side elevation and fencing to southern boundary.
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Appeal B Ref: APP/D1590/W/25/3367510

101, 97-99 Shaftesbury Avenue, Southend-On-Sea SS1 3AN

- 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 Anjesh Patel against the decision of Southend-on-Sea City Council.
 - The application Ref is 25/00449/AMDT.
 - The application sought planning permission for the erection of a single storey building and part change of use of domestic garden at 101 Shaftesbury Avenue for use as a tea/coffee shop (Class E (previously Class A3)) and ancillary refuse and cycle storage, and external seating area with boundary treatments (amended proposal) without complying with a condition attached to planning permission Ref 22/01367/FUL, dated 19 January 2023.
 - The condition in dispute is No 7 which states that: The development hereby approved shall only be open for customers during the following hours: 8am to 6pm Monday to Sunday (including Bank and Public Holidays) and at no other times.
 - The reason given for the condition is: In order to protect the amenities of surrounding occupiers in accordance with Policies KP2 and CP4 of the Core Strategy (2007) and Policies DM1 and DM3 of the Development Management Document (2015) .
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Decision

1. Appeal A is allowed and planning permission is granted for the installation of 3No. AC units, extract flues with related screens to roof, door to side elevation and fencing to southern boundary at 101, 97-99 Shaftesbury Avenue, Southend-On-Sea SS1 3AN in accordance with the terms of the application, Ref 25/00134/FUL, and the plans submitted with it, subject to the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with drawing nos DGA-SA-PL-ARC-SP-100 Rev B; DGA-SA-PL-ARC-LP-101 Rev A; DGA-SA-PL-ARC-LP-102 Rev D and DGA-SA-PL-ARC-PERS-502 Rev B.
 - 2) The noise mitigation measures as detailed in the submitted 'Noise Impact Assessment Report Ref. CLI0658/R1/Rev.B dated 27 February 2025' (the Report) by Climate Acoustics shall be implemented by competent persons.

Prior to first operation of any plant and equipment hereby approved, a post completion noise survey must be undertaken by a suitably qualified acoustic consultant with all plant and equipment running simultaneously and at maximum speed and output, and a report submitted to and approved in writing by the local planning authority pursuant to this condition. The post completion testing shall assess performance of the noise mitigation measures against the noise levels as set out in the Report. With reference to British Standard BS7445:2003, the noise from any plant and equipment used in association with the development hereby approved shall be at least 10 dB(A) below the background noise levels as measured at 1 metre from the facades of the nearest noise sensitive premises and expressed as a LA90,15minutes. If the mitigation measures tested in the post-completion report prove to be insufficient, additional noise mitigation measures (where necessary to ensure the appropriate noise levels can be met), shall be submitted to and approved in writing by the local planning authority and installed and tested prior to operation pursuant to this condition.

- 3) The screening installed at the rooftop of the unit, including the timber screen and the faux hedge, shall be retained as installed for the lifetime of the development.
- 4) Within one calendar month from the date of this permission, the air conditioning unit which is approved to be relocated to the southern elevation of the building, shall be removed from the northern elevation of the building.

2. Appeal B is dismissed.

Preliminary Matters

3. As set out above, there are two appeals on this site. One for the installation of three air conditioning units, extract flue and related screens on the roof, a door on the side elevation of the building and fencing along the southern boundary and the other is an appeal against a condition relating to opening hours. However, to avoid duplication I have dealt with the two schemes together, except where otherwise indicated.
4. The application was submitted part retrospectively, and I saw during my site visit that plant equipment had been installed on the roof, and was enclosed by a structure covered with artificial hedging, and fencing had been installed on the southern boundary of the site. I have therefore considered the appeal on a part retrospective basis.
5. The description of the proposed development in Appeal A outlined above has been taken from the appeal form rather than the application form, as this provides a more accurate description of the proposal.

Main Issues

6. The main issue in Appeal A is the effect of the proposed development on the character and appearance of the appeal site and the surrounding area.
7. The main issue in Appeal B is the effect that amending condition 7 would have on the living conditions of the occupiers of neighbouring properties with regards to noise and disturbance.

Reasons

Character and Appearance (Appeal A)

8. The appeal site is occupied by a single storey building fronting Lifstan Way to the rear of a corner shop on Shaftesbury Avenue. This building is currently used as a restaurant/bistro. The surrounding area is a mix of residential properties on Shaftesbury Avenue along with open green space either side of Lifstan Way which includes various uses including a children's playground opposite the appeal site.
9. The development includes two air conditioning units and an extract flue on the roof screened by an enclosure, one air conditioning unit on the southern side of the building relocated from the northern side of the building, a timber fence on the southern boundary of the site and a door on the southern side elevation of the building.
10. Whilst the plant on the roof extends the full width of the building, it is well screened by an enclosure with artificial hedging surrounding it, to soften its appearance within the streetscene, particularly due to its close proximity to open green space. Its location at roof level, set back from the front elevation of the building, also minimises its visibility from street level and, as such, is not an overly prominent addition to the building or within the surrounding area.
11. Such features of a commercial building are not readily seen in the surrounding residential area, although it is noted that air conditioning units are present on the adjacent corner shop. However, the presence of air conditioning units and extract flues are common features on such buildings and therefore are not wholly out of keeping with the character and appearance of the area, where a building with a commercial use was clearly considered acceptable.
12. The third air conditioning unit, the door on the side elevation of the building and the fence on the southern boundary would have limited visibility from the public realm and would not be incongruous additions to the development, with little impact upon the character and appearance of the site or surrounding area.
13. Therefore, for the reasons above, the development as a whole would not harm the character and appearance of the site or the surrounding area and would comply with Policies KP2 and CP4 of the Southend on Sea Core Strategy Development Plan Document 1 (the CS) 2007 and Policies DM1 and DM3 of the Southend on Sea Development Management Document (the DMD) 2015. These policies collectively seek to ensure that all development is well designed, respects the character and scale of the existing site, neighbourhood and its local context and provides appropriate detailing that contributes to and enhances the distinctiveness of place.

Living Conditions (Appeal B)

14. Appeal B seeks to amend condition 7 of the original planning permission¹ to change the stipulated opening hours of the premises from 8am to 6pm on all days to 7am to 9pm also on all days. As part of the application, a Noise Impact Assessment was submitted by the appellant which concludes that the expected noise from patrons and background music inside the bistro bar at full capacity is not likely to create unacceptable noise levels. However, it also recommends that a

¹ Ref 22/01367/FUL(the original planning permission)

noise management plan is provided to manage customer noise effectively, including controls on music noise, controls on patron noise, engagement with nearby residents, signage and staff training.

15. The appellant contends that the appeal site is some distance from the nearest residential property and is more related to the open green space on Lifstan Way. However, whilst the building fronts Lifstan Way, the appeal site is located to the rear of the dwellings on Shaftesbury Avenue and the building is directly adjacent to the rear garden space of both 101 and 103 Shaftesbury Avenue. Therefore, due to this close proximity, it is likely that any increases in noise levels from the appeal site would impact upon the living conditions of those occupying these dwellings, particularly when using their rear garden space.
16. Whilst the appellant states that the use of the building, as a bistro, is not an overly noisy use, the Noise Impact Assessment highlights that noise would be generated from background music and people talking. This would be more noticeable during the summer when windows and doors may be open, and it would be unreasonable and difficult to enforce a stipulation that these were closed at all times, even if a noise management plan was implemented including this. Furthermore, noise would be generated from comings and goings to the bistro, including from patrons talking and additional vehicle movements such as taxi drop offs and pickups, for which a noise management plan would have little control over. The maximum capacity is 70 patrons, a high number for a small venue, and would be likely to create a continuous stream of people arriving and departing the premises, if operating at full capacity.
17. The extended opening hours would result in one additional hour open in the morning and three additional hours open in the evening. Whilst this is not a significant increase in operational hours and would not result in the premises being open overly late into the evening, the additional hours are at more sensitive times to local residents, as they are more likely to be at home and background noise is likely to be limited. Therefore, due to this, the proximity of the premises to neighbouring residential properties and the difficulty in controlling expected noise sources, the extended opening hours would be likely to have a detrimental impact on the living conditions of the occupiers of neighbouring properties on Shaftesbury Avenue in relation to noise and disturbance.
18. It is noted that Lifstan Way and Shaftesbury Avenue are relatively busy roads with a number of vehicle movements. However, some noise from vehicles is generally expected in residential areas, is not constant and is generally limited early in the morning and later in the evening. Therefore, current traffic levels in the area do not necessarily result in high levels of background noise which may make the extended opening hours and the noise associated with this less noticeable to neighbouring residents.
19. There is a well-used park and playground opposite the appeal site, which may well be used into the evening during the summer months, and also a football club within the park, which has floodlights to facilitate play during the hours of darkness. However, these facilities are located further from residential properties than the appeal site, separated by the road Lifstan Way, and therefore are not directly comparable in terms of noise and disturbance to neighbouring occupiers. Furthermore, although restaurants and public houses are often successfully located alongside residential properties throughout the country, including within the

Southend-On-Sea area, these are granted planning permission dependant on local circumstances and settings and therefore do not set a precedent for the proposed opening hours before me.

20. I therefore conclude that varying condition 7 to allow for extended opening hours between 7am and 9pm would be likely to have a harmful impact on the living conditions of the occupiers of the neighbouring properties on Shaftesbury Avenue with regards to noise and disturbance. It would therefore conflict with the relevant sections of Policy CP4 of the CS and Policies DM1 and DM3 of the DMD which, amongst other things, seek to ensure that development secures good relationships with existing development, protecting the amenity of the immediate neighbours having regard to noise and disturbance with proposals resisted where they would create a detrimental impact on the living conditions and amenity of neighbouring residents.

Other Matters

21. I note the appellant's assertions that the current opening hours removes the potential for evening trade and that government policy is generally supportive of business. However, no evidence has been provided to suggest that the business would struggle to successfully operate with the current opening hours. Therefore, this would not outweigh the harm I have identified in relation to Appeal B.
22. A third party has highlighted that a number of works have been carried out on the appeal site without planning permission, that the appellant has breached their alcohol license and that permission was originally granted for a tea/coffee shop but is now being used as a bistro. However, none of these matters are relevant to the appeals before me and therefore have had no bearing on my consideration of either case.

Conditions

23. The conditions imposed relate to Appeal A only. I have attached a condition requiring the development to accord with the approved plans, as this provides certainty and precision. A condition has also been included securing noise mitigation measures outlined within the submitted noise impact assessment report, to ensure that any noise from the plant has a limited impact on the living conditions of the occupiers of neighbouring dwellings, due to the residential location of the appeal site.
24. Lastly, conditions have been included to ensure the screening on the rooftop of the building is retained for the lifetime of the development and that the air conditioning unit to be relocated is carried out within one month from the date of the permission being granted. These conditions ensure an appropriate appearance for the development in accordance with the permission sought.

Conclusion

25. In relation to Appeal A, for the reasons given above, the appeal is allowed. However, in relation to Appeal B, for the reasons given above, I conclude that the appeal should be dismissed.

E Grierson

INSPECTOR

Appendix 1

List of those who have appealed

Reference	Case Reference	Appellant
Appeal A	APP/D1590/W/25/3367509	Mr Anjesh Patel
Appeal B	APP/D1590/W/25/3367510	Mr Anjesh Patel