
Appeal Decision

Hearing held on 3 June 2014

Site visit made on 3 June 2014

by Michael Boniface MSc MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 16 June 2014

Appeal Ref: APP/B4215/A/14/2213684

'Soap Opera', 32 Beech Road, Manchester, Greater Manchester, M21 9EL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 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 Patrick Hall against the decision of Manchester City Council.
 - The application Ref 103139/JO/2013/S1, dated 10 July 2013, was refused by notice dated 9 September 2013.
 - The application sought planning permission for a change of use of ground floor from vacant laundrette (*sui generis*) to restaurant with associated outdoor seating area (Class A3), together with a fume extraction flue to the rear without complying with a condition attached to planning permission Ref 101559/FO/2013/S1, dated 25 April 2013.
 - The condition in dispute is No 4 which states that: *The outdoor seating area shall not be open outside the following hours:- 10.00 to 17.30 hrs daily.*
 - The reason given for the condition is: *In the interests of residential amenity in order to reduce noise and general disturbance in accordance with saved policy DC26 of the Unitary Development Plan for the City of Manchester and Policies DM1 and SP1 of the Manchester Core Strategy.*
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Decision

1. The appeal is allowed and planning permission is granted for a change of use of ground floor from vacant laundrette (*sui generis*) to restaurant with associated outdoor seating area (Class A3), together with a fume extraction flue to the rear at 'Soap Opera', 32 Beech Road, Manchester, Greater Manchester, M21 9EL in accordance with the application Ref 103139/JO/2013/S1 dated 10 July 2013 subject to the conditions contained in the attached Schedule.

Preliminary Matter

2. It was established at the hearing that the plans submitted for this appeal differ from those upon which the Council made its decision. However, both sets of plans identify the outside seating area and it was agreed between the parties that the plans submitted were sufficient for the purposes of the appeal. I am satisfied that no parties' case would be prejudiced by my reference to the submitted drawings and I have used them in my determination of the appeal.

Background

3. Following implementation of planning permission '101559/FO/2013/S1', the appellant considers that the hours restriction imposed on the outside seating

area is overly restrictive and hindering the growth and success of the business. The appeal follows an application to vary condition 4 so as to allow the seating area to operate from 9.30 to 22.00 daily.

Main Issue

4. The main issue is the implications of the proposed varied opening hours on the living conditions of neighbouring occupants.

Reasons

5. The site comprises a ground floor restaurant with an extensive outside seating area that wraps around the front and side. The unit forms the end of a row of terraced buildings, the majority of which operate commercial uses at ground floor level. The commercial uses in the street, including shops, cafes, restaurants and public houses make up a neighbourhood centre that provide a range of services to local people, creating a vibrant atmosphere. Whilst there is clearly a concentrated service function in the vicinity, the area is also interspersed with residential properties, including first floor flats over commercial uses.
6. The site is located on the eastern edge of the neighbourhood centre which is noticeably more residential in character, notwithstanding the commercial uses adjoining. A park stands opposite the site, whilst residential properties surround, including at first floor level above the restaurant.
7. The use of the outside area has some impact on the living conditions enjoyed by the surrounding occupants, given the coming and goings, talking and general activity associated with a restaurant use. The appellant explained that staff currently maintain strict control over users of the area to ensure that noise and disturbance is minimised. Notwithstanding concerns by the Council and an interested party, I have been provided with little evidence to suggest that such control is proving ineffective, and would not be operated during the longer hours which are now proposed. However, I accept that any planning permission allowing longer hours would be open to future operators who may not impose the same level of control. As such, I can only attribute limited weight to this matter.
8. Whilst there would be likely to be some impact on living conditions, this must be considered in context. The restaurant stands in a busy neighbourhood centre, albeit on its edge. The character of the area is one of mixed use, where commercial and residential uses co-exist. This is what makes the area an interesting and vibrant place that appeared to be an attractive location for people to live.
9. My attention was drawn to numerous other licensed premises along the street, many of which had outside seating areas that were unrestricted, including at least one that played music externally. I acknowledge that many of these uses could pre-date the planning system and are likely to be long established venues that the Council cannot control through the planning system. Whilst this is so, they nevertheless contribute to the established environment and character of the area.
10. Although on the edge of the neighbourhood centre, I am mindful that planning permission has already been granted by the Council for ground floor use of the building as a restaurant (with opening bi-fold doors) and for use of the outside

area from 10.00 to 17.30. The Council suggest that these hours were imposed to coincide with general working hours and the times that surrounding residents would be likely to be at home. However, I do not accept that a restaurant use in this location should be restricted in this way. A restaurant is not an overly noisy or disruptive use and should not, in my view, prevent nearby residents from enjoying their properties or relaxing. This is particularly so in the context of the nearby commercial uses, including other restaurants and licensed premises. The proposed use of the outside area would not be uncharacteristic and the outside area would still be restricted from opening at unsociable night time hours.

11. The proposed use relates to a restaurant as opposed to a more intrusive entertainment use and the proposed 22.00 closing time would be far earlier than many of the nearby uses. Furthermore, the Council has imposed conditions on the existing use of the outside area which restrict the playing of amplified music. This condition would not be affected by the proposal before me. The proposed use, restrictive conditions and limited opening hours sought (9.30 – 22.00) appear to reflect the more residential character at the edge of the neighbourhood centre, whilst contributing to the existing service offering.
12. The appellant produced a Noise Report in support of the appeal which sought to demonstrate that noise levels at surrounding residential properties would remain appropriate and that the outside seating area currently has little impact on the local noise environment. The report refers to BS 8233¹ and concludes that the proposed outside area would not impact on the desirable criteria for indoor ambient noise levels for dwellings at the 3 locations monitored. Whilst the Council generally agree with its findings, including the use of BS 8233, both parties agreed that the matter of amenity differed from that of the statutory noise nuisance tests and that measurements could only partially assist in assessing impact. Therefore, the results of the Noise Report have not been determinative in reaching my decision.
13. Whilst the Noise Report does not consider the impact of the increased opening hours on the first floor flat above the restaurant, it was explained that this was within the ownership of the appellant. Whilst continued ownership cannot be guaranteed, any subsequent owner would purchase in the knowledge that the flat was located above a ground floor commercial use. Furthermore, the amount of noise and disturbance generated by the use would be appropriate to the location within a busy neighbourhood centre. For this reason, having had regard to their representations, I also find that the development would not harm the living conditions of the occupants at 40b Beech Road, a first floor flat further along the street. The unit would not be directly over the outside area and is located closer to the other commercial uses, where I have established that a degree of noise and disturbance is intrinsic. All other residential properties are well separated from the outside area.
14. Overall, I conclude that the proposed opening hours for the outside area would not significantly harm the living conditions of neighbouring occupants. As such, I find no material conflict with Policies DC10 and DC26 of The Manchester Plan, The Unitary Development Plan for the City of Manchester (1995), which seek to protect neighbouring living conditions, including from noise, with particular regard to food and drink uses; or Policies DM1, SP1 and C8 of the Core

¹ BS 8233:2014 (Guidance on Sound Insulation and Noise Reduction for Buildings)

Strategy Development Plan Document (2012), which amongst other things, protect neighbouring living conditions from the impacts of new commercial development, particularly those arising from food and drink uses, and seek to make a positive contribution to the health, safety and wellbeing of residents.

15. I note concerns that the outside area could be used as a bar rather than a restaurant but this is not the use before me. Similarly, allegations that the outside seating area is already used until 23.00 hours are a matter for the Council.
16. Both parties agreed that the conditions imposed on the original planning permission, none of which have been discharged, remain relevant to the current proposal, subject to rewording in order to reflect the fact that the original permission has been implemented. I have no reason to disagree but I have amended the proposed condition 1 to reflect the drawings submitted at the appeal stage. I have also amended the wording of the conditions as necessary to improve their precision and ensure compliance with advice on the use of conditions contained within Government Planning Practice Guidance.
17. In light of the above, and having considered all other matters, the appeal is allowed.

Michael Boniface

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: 'Ground Floor Outline Plan', 'Proposed Plans' and 'Layout Plans' (13/680/02).
- 2) Details and specifications of all materials to be used on all external elevations of the development, including means of enclosure, shall be submitted for approval by the local planning authority within 1 month of this decision. The development shall thereafter be carried out in accordance with the approved details and a timetable agreed by the local planning authority.
- 3) The outdoor seating area shall not be open outside the hours of 09.30 to 22.00 daily.
- 4) The ground floor premises shall not be open outside the hours of 08.00 to 23.00 daily.
- 5) Deliveries, servicing and collections, including waste collections, shall not take place outside the hours of 07.30 to 20.00, Mondays to Saturdays. No deliveries/waste collections shall take place on Sundays or Bank Holidays.
- 6) The premises shall be acoustically insulated and treated to limit the break out of noise in accordance with a noise study of the premises and a scheme of acoustic treatment. Details shall be submitted for approval by the local planning authority within 1 month of this decision. The development shall thereafter be carried out in accordance with the approved details and a timetable agreed by the local planning authority.
- 7) Any externally mounted ancillary equipment shall be acoustically treated in accordance with a scheme designed to achieve a noise level of 5db below the existing background (LA90) in each octave wave band at the nearest noise sensitive location.
- 8) The use hereby approved shall only be carried out in accordance with the refuse storage and collection scheme (including segregated waste recycling) as detailed on drawing 13/680/02A submitted as part of planning application 101559/FO/2013/S1. No bins shall be kept on the forecourt other than on the day of collection.
- 9) The outside seating area hereby approved shall not allow for the use of amplified sound or music at any time.
- 10) The rear yard area shall not be used as a seating area or outside drinking area at any time, or for any other use by patrons of the establishment.

Appearances

For the Appellant:

Mr Stuart Page, Solicitor	Agent
Mr Andrew Raymond	Acoustic Consultant
Mr Patrick Hall	Appellant
Mr Jon Charles	Business Partner

For the Local Planning Authority:

Mr Steve McCoombe	Planning Officer
Ms Erica Webb	Environmental Health Officer
Ms Juliet Mbam, Solicitor	Solicitor