Appeal Decision

Site visit made on 19th January 2009

by Jonathan G King BA (Hons) DipTP MRTPI

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

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Decision date:
10 February 2009

Appeal Ref: APP/B4215/A/08/2089887
Didsbury House Hotel, 813a Wilmslow Road, Didsbury, Manchester M20 5LJ

- 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 Eamon O'Loughlin against the decision of Manchester City Council.
- The application Ref 087342/JO/2008/S2 dated 25th July 2008, was refused by notice dated 22nd September 2008.
- The application sought planning permission for the *change of use from offices to 26 bedroom hotel, with 2-storey side extension fronting Wilmslow Road, and 3-storey side extension fronting Didsbury Park, and with associated facilities* without complying with a conditions attached to planning permission Ref 061794/FO/SOUTH2/01, dated 18th October 2001.
- The condition in dispute is No 12 which states that: *The lounge bar, restaurant, gymnasium and its associated facilities hereby authorised shall only be used by guests of the hotel and shall not* (sic) *available for use by non-resident members of the public*.
- The reason given for the condition is: *In the interests of residential amenity*.

Decision

1. I dismiss the appeal.

Procedural matter

2. A member of the public has drawn my attention to the wording used on the appeal form to describe the development, which differs from that of the disputed condition 12. Having regard to all of the submitted material, I am satisfied as to the nature of the application and of the appeal. Moreover, I take the view that no interested party would have been materially misled by the wording on the appeal form. There is no reason to reject the appeal on technical or procedural grounds. I shall therefore proceed to determine it on the basis described in my preamble.

Main issue

3. The main issue in this case is whether the disputed condition is reasonable and necessary, having particular regard to the living conditions of local residents and the terms of the hotel's Premises Licence.

Reasons

4. The hotel stands on the corner of Wimslow Road and a road known as Didsbury Park. The section of Wilmslow Road on to which it faces is a busy radial route running through an area of mixed uses a short distance outside Didsbury centre. Opposite the light-controlled junction is a business park, dominated at its entrance by large office buildings; and to the side of the hotel is a car park associated with facilities at the adjoining university campus. But the hotel itself gains vehicular access from Didsbury Park which has quite a different character. Apart from the sister hotel at No 11, its frontages are wholly residential.

5. Planning Policy Guidance 4 *Industrial and Commercial Development and Small Firms* (PPG4) says that in primarily residential areas, plan policies should not seek unreasonably to restrict commercial activities of an appropriate scale – particularly in existing buildings - which would not affect residential amenity. The principle of an hotel in this building has been established by the grant of planning permission in 2001. Condition 12 is one of a number of conditions placed on that permission in the interests of residential amenity. As a starting point, I take the view that, given the proximity of dwellings and the objectives of Policies H2.2 and DC26 of the Unitary Development Plan for the City of Manchester (UDP), it is reasonable for the Council to seek to protect the living conditions of local residents from noise, disturbance and intrusion that may arise as a result of the operation of the commercial use or the activities of its customers. This is accordance with the advice of PPG4. The fact that close by there are non-residential uses does not materially diminish the residential character of Didsbury Park nor the reasonableness of seeking to protect the quality of life of those living there.

6. The appellant's stated intention is that, through the removal of condition 12, the reception, lounge / bar areas and conference rooms would be opened to non-residents for conferences, civil ceremonies, weddings and similar functions. Although the hotel's gymnasium is covered by the condition, I am informed that it would not be the intention to open that to the public, as it is too small. My inspection confirmed that is indeed small and limited in facilities, and unlikely to be very attractive to non-residents.

7. There is some dispute concerning the number of people who might reasonably attend functions at the hotel. My attention has been drawn to independent advertising material which says that "intimate dining is available for parties of 8 to 150". But I am satisfied from information supplied by the appellant that this is an error, referring to another hotel in the same chain. Indeed, the accommodation is limited; and my inspection of the property supports the hotel's own advertising that claims a private dining capacity of 20 in the Blue Room and 12 in the Boardroom, which together with use of the Lounge may accommodate larger parties. The appellant's claim that a maximum of 80 persons would attend a function on the premises seems entirely credible. The planning permission describes the hotel as having 26 bedrooms and the hotel's publicity states that there are 27, but the difference is not material so far as this appeal is concerned. The appellant says that up to 60 people may be accommodated. Against that background, allowing the hotel to be open to non-residents might increase the maximum number of people on the premises by about 20 or 25.

8. In itself, I doubt whether having 80 rather than 60 people on the premises would have any marked effect on the quality of life of local residents, as activity within the hotel would be contained. My concern is not so much with the additional numbers on the site, but with the differences in the way the premises would operate, and the consequences for the demand for parking and activity outside the hotel.

9. The hotel is provided with 29 vehicle parking spaces. I have no reason to believe that this is not presently adequate, as generally it might be expected that each room would give rise to a demand for no more than one space. But, in my view, demand would be substantially greater for functions or conferences, where more people might be expected to travel alone. It would probably vary depending on whether the function was during the daytime when attendees might be there just for the day, or the evening, when some may also stay overnight. But, even allowing for some car-sharing, the present parking provision would not be sufficient to cope with considerable demand from the larger functions. The likely result would be that, once the car parks were full, people would look to park wherever they could in the residential roads nearby.

10. I have no parking data for Didsbury Park. At the time of my visit, there was a very considerable amount of on-street parking, but it may be that this is a day-time phenomenon. However, in my opinion, whether the additional demand were to take place in the daytime or the evening, I consider that the pressure for on-street parking would have the potential to cause disturbance and inconvenience to local residents through traffic noise, thoughtless parking, and noise from the coming and going of customers. I recognise that, for much of the day, Didsbury Park and the adjoining roads will be affected by traffic and parking, possibly associated with the university campus. The appellant informs me that the university sports hall is open until 22:00. I accept that this may give rise to traffic and parking movements and some disturbance to residents during the evening. But the Premises Licence (PL) for the hotel allows the retail sale of alcohol to non-residents much later: as late as midnight every day except Sunday (which is half an hour earlier). Once drinking-up time is taken into account, there would be the clear potential for non-residents, possibly in some numbers, and staff, to be leaving the hotel premises and its surroundings on foot, and in cars and taxis after midnight on any day of the week. That, in my view, would have the clear potential to introduce noise and disturbance into the area at a time when local people may reasonably expect to enjoy their homes in peace and quiet. Such noise would, I believe, be clearly distinguishable from road noise from Wilmslow Road.

11. I am satisfied that the hotel would not function as a public house: that is clear from the terms of the PL. Some local residents are concerned at the potential for unruly behaviour and even violence from patrons. Though there is some evidence that even at well-regulated establishments such problems can arise, I do not believe that the activity would be comparable to that associated with a public house. But even good-humoured boisterous behaviour, for example from those attending family celebrations late at night can be the cause of disturbance in a quiet neighbourhood.

12. The planning permission and the PL control the times when deliveries may be made to the hotel, and the former requires vehicles to enter and exit forwards. I have read reports and seen photographs that suggest that sometimes large

vans cause an obstruction and local disturbance by parking or by turning in the road. There may have been particular reasons for these examples; and it is not part of my remit to say whether other planning conditions have been breached. But it seems to me that a further consequence of opening the hotel to non-residents could be the more frequent delivery of food and other material by vehicle, with the potential to cause additional disturbance.

The Premises Licence

13. A Premises Licence for the hotel was granted in June 2008, subject to conditions. First, as a matter of policy, Circular 11/95 *The Use of Conditions in Planning Permissions* says that matters which are subject to control under separate legislation may also be of concern to the planning system. But a condition which duplicates the effect of other controls will normally be unnecessary. However, it sets out limited circumstances in which it would be appropriate to have both controls.

14. In this case, I am in no doubt that the question of whether certain facilities at the hotel should be open to non-residents is a relevant consideration to both legislative codes. Personal well-being is a recognised objective of the planning system and, as I have already indicated, it is appropriate for a local authority to seek to protect the living conditions of the local population from development that has the potential to cause harm. Planning Policy Statement 6 *Planning for Town Centres* (PPS6) and Circular 3/2005 *Change of Uses of Buildings and Land* both place the control of the evening and night-time economy within the ambit of planning. Significantly, both post-date the passing of the Licensing Act. Neither suggests that the planning system should cease to consider certain aspects of development because of the existence of that Act. The environmental consequences of activities at hotels are planning matters and something which it is proper for the local authority to seek to address by way of planning conditions. Access to an hotel's facilities is, in principle, an area where control may reasonably be exercised.

15. The objectives of the Licensing Act include the prevention of crime and disorder and of public nuisance; and public safety. The PL conditions address some of the objectives of planning but, in my view, they do not wholly equate. For example, condition 1, requiring that *noise from regulated entertainment (the playing of recorded music) will not be audible so as to cause nuisance to the nearest residential property* is limited in scope. Should the proposed revised use of the premises lead to noise of other sorts, for example from the coming and going of vehicles and patrons at unsociable hours, the PL would be ineffective. The prevention of public nuisance or crime and disorder, or the objective of public safety are not the same as seeking to protect residential amenity or living conditions. What might harm living conditions may well fall far short of constituting a public nuisance or a crime. Noise and disturbance from late night activity might well be extremely annoying to a local resident, and yet it would not necessarily be a public nuisance or breach the conditions of the PL.

16. I conclude that a planning condition which limits access to the hotel's facilities, even though it might duplicate aspects of conditions on a PL, may still be necessary because the considerations material to the exercise of the two systems are substantially different, and it would be unwise to rely on the

licence being exercised in the manner or to the degree needed to secure planning objectives. This is in accordance with the guidance in Circular 11/95. Similarly, in my view, it should not be regarded as paradoxical for two parts of the same Council to come to different conclusions. The Licensing Committee and the planning authority have different terms of reference and consequently they are entitled to do so.

Overall Conclusions

17. I conclude that although there is substantial overlap between the planning and premises licensing regimes, there is sufficient difference in their objectives to justify limiting access to the hotel's facilities by way of a planning condition. I conclude that the removal of condition 12 would have the potential to cause harm to the living conditions of those residing locally, contrary to intentions of the UDP. I am therefore satisfied that it is both reasonable and necessary that condition 12 should continue to be applied.

18. In reaching these conclusions, I acknowledge that the appellant is seeking to place the hotel on a similar footing to some other local hotels; and that relaxation of the condition may provide greater certainty over the future of the business, the upkeep of the Listed Building it occupies and the employment it provides. But neither these nor any other matter raised in support of the proposal outweighs the harm I have identified. The appeal therefore fails.

Jonathan G King

Inspector