



Appeal Decision

Site visit made on 4 April 2023

by Samuel Watson BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 June 2023

Appeal Ref: APP/B4215/W/22/3311001

320 Wilmslow Road, Manchester M14 6XQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Ms Natalie Power against the decision of Manchester City Council.
 - The application Ref 132530/FO/2021, dated 15 December 2021, was approved on 1 June 2022 and planning permission was granted subject to conditions.
 - The development permitted is the change of use of ground floor hairdressing salon to bar/restaurant (*sui generis*) together with single storey rear extension, installation of extraction flue and creation of external seating areas.
 - The conditions in dispute are Nos 3 and 4 which state that:
 - 3) The premises shall not be open outside of the following hours:
08.00-00.00 Monday to Saturday
09.00-23.00 Sundays and Bank Holidays
 - 4) The hours of use of the external seating area at the front of the property in connection with the use of the site as a café-bar/restaurant, shall not be operational after 9.30pm daily.
 - The reasons given for the conditions are:
 - 3) To safeguard the amenities of the occupiers of nearby residential accommodation pursuant to policies SP1 and DM1 of the Manchester Core Strategy and to saved policy DC26 of the Unitary Development Plan for Manchester.
 - 4) To safeguard the amenities of the occupiers of nearby residential accommodation when the development is complete, pursuant to saved policy DC26 of the Unitary Development Plan for the City of Manchester and policies SP1 and DM1 of the Core Strategy for Manchester.
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Decision

1. The appeal is dismissed.

Background and Main issue

2. The appeal site is currently split in to three uses, a hairdresser's within the basement, a café-bar on the ground floor and a residential flat on the upper floors. Permission was granted for this under 132530/FO/2021 which also imposed the above-mentioned conditions. The appellant wishes to alter the conditions in order to allow the café-bar to remain open between 08:00 and 02:00 on Friday and Saturday, and the outside seating area to remain open until 00:00 Monday to Saturday and 22:30 on Sundays and bank holidays.
3. The main issue is therefore the effect of altering conditions 3 and 4 on the living conditions of neighbouring residential occupiers.

Reasons

4. The appeal site is located on Wilmslow Road which, within the immediate vicinity, is a commercial area primarily aimed towards hospitality. During my observations, and from the submissions before me, this largely revolved around takeaways, restaurants and public houses. To the rear of these, and served by side streets, the area becomes residential. The appeal site forms the last unit of a row and, as noted above, contains a residential flat on the upper two floors, to the rear of the site are a number of blocks of flats. There is a seating area to the front of the site which separates the café-bar from the pavement.
5. There are some discrepancies between the description of the way in which the café-bar will operate and the nature of its offerings. However, from the details of the licensing application and agreement, it is clear that the unit intends to provide live entertainment, such as music, DJs and karaoke until midnight through the week and until 02:00 once a month and at various other specified dates. I note also the appellant's intention to cater for dancing on the premises as well as hen and stag parties.
6. The appellant's Noise Impact Assessment (the NIA) refers to seated customers talking and music being the general character of the noise emanating from the café-bar. However, and given the above, I find this underestimates the complete nature and character of the noise likely generated. In particular, it does not appear that live music was factored into the NIA assessment, nor the more exuberant socialising typically associated with late night establishments, alcohol and live entertainment or parties. In my mind, either individually or cumulatively, these factors would exceed the level of talking and background music typically associated with a sit-down café, restaurant or bar.
7. Although the proposal will likely generate a greater level of noise than set out within the NIA, the character and level of noise would be similar to other uses nearby. Therefore, and given the distance between the appeal site and the residential blocks to the rear of the site, I find that these units would not be unacceptably affected by the proposed later opening hours and use of the outside seating area.
8. Nevertheless, by way of adjoining the café-bar, the upstairs flat would be more susceptible to noise generated on site. This would be especially so later into the night and in the early morning when background noise levels will have dropped. Although the day-time use may primarily be characterised by its café side, which would be a quieter and calmer environment, in my mind it would inevitably transition towards the bar use as the day went on. The associated noise and its character would similarly grow, be more disruptive and audible from the upstairs flat. Whilst the NIA includes noise insulation, I cannot be certain that this would be sufficient to protect the living conditions of these neighbouring occupiers when the late-night elements of the café-bar's offering are held. This is especially so given the location of two bedrooms on the first floor directly above public areas of the café-bar.
9. The outside area, when associated with live entertainment and alcohol, would similarly generate a greater level of noise and disruption than accounted for within the NIA. Such noise levels at night and into the early hours of the morning, when occupiers of the flat above may be attempting to sleep, would be disruptive. Stopping the use of the outside seating area at 21:30 would

minimise noise generation to a level in-keeping with the levels set out in the NIA. Allowing the use of the outside seating for the proposed extended hours would not only continue the outside noise generation but, as noted above, result in increased levels of noise to the detriment of the living conditions of the occupiers above.

10. I note from the submissions before me that a number of the bars and takeaways have opening hours that exceed the hours permitted under this scheme. However, I have been provided with limited details of these examples and it appears that not all of those opening later have planning permission to do so. Moreover, I understand that, with the exception of the Great Central – Wetherspoon, the appeal site is the only public house with residential accommodation above. Regarding the Wetherspoon, the nature of the building and its relationship to the accommodation above is markedly different. Nevertheless, and as all proposals must be considered on their own merit, these examples have not been determinative in my considerations.
11. Allowing the opening hours of the café-bar and its outside space to extend beyond the existing approved hours, by varying conditions 3 and 4, would unacceptably affect the living conditions of the neighbouring occupiers in the flat above. The variation of these conditions would therefore conflict with Policies SP1, DM1 and C10 of the Core Strategy Development Planning Document (July 2012, the CS) and Policies DC10 and DC26 of the Unitary Development Plan for the City of Manchester (July 1995, the UDP). These policies collectively, and amongst other matters, require that developments consider and protect the health, wellbeing and living conditions of neighbouring occupiers with particular regard to noise and disturbance. The proposal would also conflict with the aims of the National Planning Policy Framework set out under Paragraph 130(f) which seeks for developments to promote well-being and health and provide a high standard of amenity for existing users.

Other Matters

12. I recognise that the appellant has received a license to operate from the Council, however, as the licensing process is separate from planning this agreement does not preclude me from assessing the proposal or reaching a different conclusion.
13. Although of some age, the Core Strategy, in so far as it is relevant to the appeal before me, is compliant with the National Planning Policy Framework and I have no other reason to find the Core Strategy to be out-of-date.

Conclusion

14. The variation of conditions 3 and 4 would harm the living conditions of neighbouring occupiers and would conflict with the development plan taken as a whole. There are no material considerations that indicate the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, I conclude that the appeal should be dismissed.

Samuel Watson

INSPECTOR