



Appeal Decision

Hearing held on 21 October 2008
Site visit made on 21 October 2008

by **R J Marshall** LLB Dip TP MRTPI

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

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Decision date:
18 November 2008

Appeal Ref: APP/D1780/A/08/2073082

The Terminal, 5-6 Portswood Centre, Portswood Road, Southampton

- 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 Barracuda Group Ltd. against the decision of Southampton City Council.
- The application Ref 07/02055/VC/29854, dated 20 December 2007, was refused by notice dated 4 March 2008.
- The application was described as "Variation of condition 3 attached to permission no. 04/00210/FUL".
- Condition No. 03 states that:
"The use shall be restricted to the following hours: -
Monday to Saturday – 09.00am to 11.30pm
Sundays – 09.00am to 11.00pm
Outside of these hours the premises shall be closed to the public".
- The reason given for the condition is: "To safeguard the amenities of neighbouring properties and the area generally".

Decision

1. I allow the appeal and grant planning permission for an A4 drinking establishment including ancillary staff accommodation at first floor at the Varsity, 5-6 Portswood Centre, Portswood Road, Southampton in accordance with the application Ref 07/02055/VC/29854 dated 20 December 2007, without compliance with condition number 03 previously imposed on planning permission Ref 04/00210/FUL/26815 dated 14 June 2004 but subject to the other conditions imposed therein, so far as the same are still subsisting and capable of taking effect, and subject to the following new condition: *No customers shall be on the premises of the use hereby permitted outside the following times: Sundays to Saturdays 09.00 hrs to 00.00 hrs.*

Procedural matters

2. At the time the application the subject of this appeal was made the appeal premises was a public house known as The Terminal. It is now known as the Varsity.
3. The application before me should more accurately have been described as being for permission to develop land without complying with condition 03 subject to which planning permission 04/00210/FUL/2815 was granted. That permission was for "Change of use from retail (A1) to food and drink (A3)

- including ancillary staff accommodation at first floor". Moreover, since the date of that decision changes to the Use Classes Order created a separate A4 drinking establishment use. A public house falls within that Use Class. The parties confirmed that if the appeal was allowed the new permission should refer to the appeal premises being an A4 use. I concur with that approach. My decision reflects this and the other matters to which I have referred above.
4. The appellant confirmed that on Mondays-Saturdays inclusive the appeal premises is operated on the basis of last orders being at 23.00 hrs with customers being required to vacate the premises by 23.30 hrs. Both parties read the disputed condition as requiring this.
 5. On the application forms the proposal before me was described simply in the terms set out in the bullet points of this decision. A letter accompanying the application said that it was proposed that the opening hours be extended as follows: Sundays to Saturdays 09.00 hrs to 00.00 hrs.
 6. In the discussion on conditions, towards the close of the hearing, the appellant said that a condition imposed on any new permission should be worded so as to enable drinks to be served up until 00.00 hrs and requiring customers to vacate the premises by 00.30 hrs. Strong objections to this were raised by the Council and local residents who said that this went beyond what they thought the appellant had been seeking. They had read the proposal as requiring the premises to be vacated by 00.00 hrs.
 7. The wording of the application and covering letter refers only to a change of hours. In the absence of any evidence to the contrary it was reasonable for the Council to have taken it that the suggested additional hours were sought on the basis of the same restriction that currently applies, that is that any drinking up time is included within the specified hours.
 8. Added weight is given to this being the appellant's intention when submitting the application by the fact that the Officers' report, recommending permission, carried a condition identically worded to the existing condition 03, but with the following hours referred to: Mondays to Sundays 09.00 to 00.00. At no time prior to the hearing did the appellant object to this or suggest that a differently worded condition should be imposed so as to allow drinking up time beyond 00.00 hrs.
 9. In additional support of this view is the acoustic report prepared for the appellant. This said that "The current trading hours of The Terminal are up to 23.30 hrs Mondays to Saturdays and 23.00 hrs on Sundays. We understand that the proposed extension of trading hours would be to midnight Monday to Sunday. All of the times given above include a 30 minute drinking up period subsequent to last orders".
 10. Having regard to the above I shall determine this appeal on the basis that the appellant was seeking to revise the opening hours of the premises so that customers would be required to vacate them by 00.00 hours. Any other approach would be contrary to a reasonable interpretation of the application and detrimental to those with an interest in the appeal.

Main issue

11. The main issue in this appeal is the effect of the proposed development on those nearby, and in surrounding residential areas, through noise and disturbance.
12. As the site lies fairly close to the Portswood Residents' Gardens Conservation Area I shall also have regard to whether the proposal would preserve or enhance the character of this area.

Reasons

Effect on residents living conditions

13. The appeal site lies towards one end of the Portswood district centre. This is a fairly large shopping area that also contains a substantial bingo hall, restaurants, takeaways and public houses. The centre lies to either side of Portswood Road, a main road leading into Southampton city centre. The Varsity has quite a large floor area and can accommodate a large number of customers.
14. The City of Southampton Local Plan Review (2006) encourages strengthening district centres and sustaining and enhancing them by allowing a diversity of uses (Policy REI 5). Within such centres A4 uses will be permitted (CLT 15). Explanatory text to this Policy says that where there would be an adverse impact on amenity, hours of opening will be conditioned. However, it also says that beyond the city centre, district centres are the venues most capable of accommodating night related activities. That being so I do not read this Policy as being as restrictive in principle on opening hours as local residents suggest. Other Local Plan Policies more generally seek to protect neighbours' living conditions.
15. Given the characteristics of the district centre referred to above it is a fairly noisy environment. Noise and disturbance will in the main be concentrated within the centre. However, it is likely that some degree of noise and disturbance will radiate out into surrounding residential areas especially along the more major roads leading to and from the centre.
16. There are residential flats above commercial properties in the district centre and houses adjoin a car park at the rear of the premises. However, residents in such areas are likely to expect a degree of noise and disturbance even into the late evenings. In this context, I see no harm in the slightly longer hours of opening sought by the appellant. I am of this view even if the opening hours of other public houses in the centre are as suggested by the Council.
17. I now turn to the effect of proposal on residents in the wider area, including some in retirement accommodation, beyond the district centre. Residents, especially those in the Conservation Area to the north of the centre, have expressed concerns about the proposed extended opening hours. Their concern is primarily on the noise and disturbance that they say would occur at a later hour from those leaving the Varsity on foot.
18. Local residents say that harm through noise and disturbance arises at present from those leaving the district centre in the evenings. However, this is largely anecdotal and there is no substantial evidence to link such noise and

disturbance to those leaving the appeal premises. That said, I also place limited weight to the figures on pedestrian movements in the appellant's noise survey, given the restricted survey period.

19. Nevertheless, given the large number of residential streets in the area I consider that those leaving the appeal premises are likely to disperse over a wide area. This should substantially reduce the impact that they would have over the area as a whole through noise and disturbance. Nor is there any substantial evidence to support concerns that the use of the Varsity causes unacceptable levels of traffic related noise and disturbance that would be exacerbated by the extended hours.
20. A major concern of residents is that, unlike The Terminal, the Varsity is a student pub. I am in no doubt, given its name and the publicity material on it, that the pub appeals to the student market. However, students are likely to disperse from the appeal premises into the surrounding roads as widely as others would. For, although the main university campus is in a specific area some distance to the north-west of the district centre, students appear to be accommodated more broadly in the wider area. Nor is there any substantial evidence, that even without a permanent police presence in the area, students would create more noise and disturbance than others of a similar age.
21. In my view, allowing the appeal premises to open half an hour later than it currently does on Mondays to Saturdays, and an hour later on Sunday, would cause only a limited degree of additional noise and disturbance in surrounding residential streets. This would not be sufficient to cause unacceptable harm to living conditions. I see this as being quite different from the recently dismissed appeal where opening hours through to 01.30 hours were sought. Opening to that hour would have had a far more substantial impact on living conditions. The current proposal provides an acceptable balance between the need for satisfactory living conditions whilst ensuring an active and vibrant district centre.
22. The Council says that it has taken a consistent approach in refusing permission for extended opening hours on other premises in the vicinity. However, only one of the cases referred to is in Portswood Road and that involved extended opening hours much later than in the case before me. Moreover, turning to local concerns on precedent, planning permission in this case would not make it more difficult for the Council to resist harmful extensions to opening hours.
23. I conclude that the proposed development would cause no unacceptable harm to the living conditions of those nearby, and in surrounding residential areas, through noise and disturbance. It would conform therefore to the Local Plan Policies to which I have referred.

Effect on Conservation Area.

24. The Portswood Residents' Gardens Conservation Area comprises attractive low density housing enclosing 2 landscaped open spaces. A certain degree of tranquillity is part of the character of this area. However, for the reasons given above, the minor extension of opening hours proposed would not impact on this to an extent that would make the proposal contrary to the statutory requirement on the preservation or enhancement of the character of such areas. There is no substantial evidence to support a view that the proposed

extended opening hours would result in any material increase in litter or graffiti in the Conservation Area.

Conditions

25. As I am minded to allow the appeal I have considered what conditions should be imposed in addition to those still subsisting and capable of taking effect.
26. To protect the living conditions of those nearby, and ensure that the permission accords with what was applied for, I shall require the premises to be vacated by customers by 00.00 hours. In so doing I note the appellant's reference to the fact that this would differ from the premises licence. However, this is justified given the differences between the planning and licensing regimes and to ensure that the new planning permission accords with what was sought.

Conclusion

27. For the reasons given above I conclude the appeal should succeed. I will grant a new planning permission without the disputed condition but substituting one other and retaining the relevant non-disputed conditions from the previous permission.

RJ Marshall

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr D Dunlop BA Hons MRTPI	Of D2 Planning Limited
Mr R Riley	Area manager of appellant company
Mr D Holton	Previous manager of appeal premises
Mr N Rayner	Previous manager of appeal premises
Mr P Hayman	Current manager of appeal premises

FOR THE LOCAL PLANNING AUTHORITY:

Miss B Giles BA Hons MSc	Planning Officer
Mrs A Lee BSc Hons Dip TP MRTPI	Senior Planning Officer

INTERESTED PERSONS:

Dr R Buckle	(Member of the Planning Action Group, Portswood Residents' Gardens Conservation Area) 29, Abbots Way, Highfield, Southampton.
Mrs J Jameson	(Member of the Planning Action Group, Portswood Residents' Gardens Conservation Area) 5, Russell Place, Southampton.
Mr J Gillen	(Chairman of Highfield Residents Association) 4, Woodstock Drive, Southampton.
Mr A Vinson	(Of Highfield Residents Association) 14, Grosvenor Road, Portswood, Southampton.

DOCUMENTS

- 1 Letter of notification of appeal and those notified.
- 2 Plans of Portwood Residents' Gardens Conservation Area.
- 3 Aerial photograph of Conservation Area.
- 4 "Varsity" publicity information from internet.
- 5 Plan with opening times of selected premises.