



Appeal Decision

Site visit made on 17 October 2023

by **A Tucker BA (Hons) IHBC**

an Inspector appointed by the Secretary of State

Decision date: 21 November 2023

Appeal Ref: APP/B1605/W/22/3310900

8 Imperial Square, CHELTENHAM, GL50 1QB

- 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 8 Imperial Square Ltd against the decision of Cheltenham Borough Council.
 - The application Ref 22/00334/COU, dated 7 February 2022, was approved on 13 May 2022 and planning permission was granted subject to conditions.
 - The development permitted is change of use from C3 (dwelling house) to mixed use of C1 (hotel) and E (bar and restaurant).
 - The condition in dispute is No. 4 which states that: The bar, lounge and restaurant hereby approved shall not be open to the general public/walk in customers outside the hours of 8:00 and 22:00 Monday to Sunday, including Bank Holidays. No general public/walk in customers for the bar and restaurant shall be served or remain in the building outside of these times.
 - The reason given for the condition is: to safeguard the amenities of the area, having regard to adopted Policy SL1 of the Cheltenham Plan (2020) and adopted Policy SD14 of the JCS (2017).
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Decision

1. The appeal is allowed and the planning permission Ref 22/00334/COU for the change of use from C3 (dwelling house) to mixed use of C1 (hotel) and E (bar and restaurant) at 8 Imperial Square, Cheltenham, GL50 1QB granted on 13 May 2022 by Cheltenham Borough Council, is varied by deleting condition 4 and replacing it with the following conditions:
 - The bar, lounge and restaurant hereby approved shall not be open to the general public/walk in customers outside the hours of 08:00 and 23:00 Monday to Sunday, including Bank Holidays. No general public/walk in customers for the bar and restaurant shall be served or remain in the building outside of these times.
 - At no time shall customers enter or leave the building by the rear courtyard. No staff shall enter or leave the building by the rear courtyard outside the hours of 08:00 and 20:00 on any day.

Preliminary Matters

2. At my visit I saw that the building had been renovated and was in use as a private members club. I viewed its interior and found that none of the rooms were in use as bedrooms. Whether this is a use that is permitted by the Council's grant of planning permission is a matter of dispute between the main parties. However, this is not something that I need to come to a view on as the appeal before me is to vary a condition that the Council imposed when it

granted planning permission for the change of use from a dwelling to a mixed use of hotel, bar and restaurant.

3. Similarly, the use of the area at the front of the building by guests is a matter that is beyond the scope of this appeal, as this area did not form part of the Council's grant of planning permission and is outside the area shown on the approved site plan.
4. The appeal was originally submitted against conditions 4 and 11. During the appeal process the appellant withdrew the appeal against condition 11, so I have only considered the appeal against condition 4 in my decision.

Background and Main Issue

5. The appeal seeks permission to carry out the development without complying with condition 4. This restricts the hours that the bar, lounge and restaurant can be used by the general public / walk in customers. The Council imposed this condition to safeguard the amenities of the area. The appellant would like to extend the opening hours. Accordingly, the main issue of the appeal is the effect that varying the opening hours of the bar, lounge and restaurant for the general public / walk in customers would have on the living conditions of neighbouring residents.

Reasons

6. The appeal building is part of a fine Regency terrace that stands close to the town centre but just outside its core commercial and shopping areas. The terrace turns its back on these areas. It faces over a main road; and beyond that it looks out towards the Town Hall and Imperial Gardens. It forms one side of a traditional square of considerable historic and architectural value. Most of the buildings in the terrace are in an office use. Despite a significant level of vehicular activity associated with the road, the square over which the terrace faces has a genteel character that is quite different to the hustle and bustle of the town centre to the north. Residents suggest that it is a tranquil area in the evening when traffic is less. Even during the day I observed that the area has a calm and leisurely character.
7. One of the terrace buildings close to the appeal site – No. 11 Imperial Square - is divided into flats. Close to the rear of the appeal building on the other side of the narrow Imperial Lane stands a purpose built development of flats, with windows that face out towards the rear of the appeal building.
8. The activity associated with general public / walk in customers accessing the bar, lounge and restaurant could be considerable. This could include people congregating outside before or after they enter the building, arriving or departing by taxi, going outside to smoke or leaving in groups whilst under the influence of alcohol. Flats at No. 11 include living rooms that face out over the front of the terrace, no doubt to enjoy the pleasant prospect and the generously sized front facing sash windows. These windows are reported to be single glazed and thus not easily able to limit the transmission of sound. They look out over the area that would be used to access the appeal building, and owing to the narrow plot widths, are in close proximity to the appeal site.
9. It is thus important to restrict activity at the appeal building to safeguard the occupants of these nearby flats. The appellant suggests extending the hours to midnight during the week and 1 am on a Friday and Saturday night. It would

- be reasonable to expect a level of activity just beyond these hours as those visiting the building vacate, and such noises have the potential to cause a significant nuisance to those occupying the flats, against the backdrop of an area that is tranquil in character.
10. I do however accept that the 22:00 deadline imposed by the Council presents a considerable restriction to those operating the business. Extending this to 23:00 would allow a more generous period of operation in the evening, whilst still ensuring that activity associated with the consented use does not harm the local environment during the main part of the night.
 11. The appellant is willing for an additional condition to be added to restrict the use of the access at the rear of the building, following its withdrawal of the appeal against condition 11. The rear of the building and the generally quiet level of activity along the ancillary lane at the rear, coupled with the very close proximity of the appeal building to the flats behind, make it necessary for access to the building to be restricted in the manner suggested by the appellant.
 12. Nearby late night venues nearby that are permitted to open through most of the night. Popworld and MooMoo Clubrooms are however away from the terrace to the north, and separated by intervening development. They relate to the much busier town centre environment and would have much less impact on the flats at No. 11 than the permitted use at the appeal site. Similarly, Imperial Haus, which is just beyond the main part of the terrace to the northwest, is well away from the flats at No. 11, and also relates to the busier uses further to the northwest. These existing premises do not therefore cause me to come to a different view on the acceptability of the proposed hours of operation.
 13. The appellant suggests that other buildings in the terrace could be changed to similar uses without planning permission. Whilst this may be the case, there is nothing to suggest that such changes are likely to occur. None of the buildings appeared to be vacant, and I must assess the appeal on the basis of the situation before me.
 14. It is suggested that the ability to use the bar and restaurant later into the evening is essential for the business to succeed. However, the condition that the Council imposed was agreed by the appellant before it made its decision, which casts doubt over how essential these additional hours would really be. There is no evidence before me to explain how additional opening hours would be essential to the viability of the business. Furthermore, the building is part of a terrace that would appear to be highly valued and in a good state of repair. There is nothing to suggest that this is the only viable use of the building that would secure its future.
 15. I have given considerable thought to the more generous hours that are permitted through the premises licence. The matters considered through both processes are very related. It is not however clear what evidence was considered by the licencing committee when it made its decision, and the processes of licencing and planning permission are separate and distinct regimes. Furthermore, licences are issued on a more temporary basis as they can be varied or revoked and are subject to ongoing review, whereas planning permission runs with the land and would be issued on a permanent basis. Accordingly, I am satisfied that it is reasonable for a planning condition to differ from the terms of a licence. Based on my reasoning above and my own

observations I am satisfied that a modest extension to the permitted hours would be reasonable, but that it is appropriate to not go as far as that suggested by the appellant or permitted by the licence.

16. In summary, varying the opening hours of the bar, lounge and restaurant for the general public / walk in customers by one hour would not harm the living conditions of neighbouring residents. An additional condition would ensure that the living conditions of those living in the flats at the rear of the site are protected from noise and disturbance during unsociable hours of the night. The conditions would accord with Policy SL1 of the Cheltenham Plan 2020 and Policy SD14 of the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy 2011-2031, which together seek to ensure that development proposals do not cause unacceptable harm to living conditions in the locality.

Other Matters

17. The appeal building is part of a grade II* listed building, known as Nos. 1-13 (Consecutive) Imperial Square¹. It stands within the Montpellier area of the Central Conservation Area. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (LBCA) requires the decision maker to have special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses. Additionally, Section 72 of the LBCA requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of a conservation area. The matter of restricting the opening hours of the building as set out above would have no impact on either the special interest of the listed building or the character or appearance of the conservation area.

Conditions

18. I have had regard to the tests in the National Planning Policy Framework and the advice in the Planning Practice Guidance. I have found that a condition restricting opening hours is necessary, however I am satisfied that a revised condition would be reasonable to modestly extend those hours for the benefit of the business whilst still ensuring that it is suitably restrictive to safeguard the living conditions of nearby residents. The replacement condition I have imposed does not refer to club members or signed in guests as suggested by the appellant as this does not relate to the permitted use as a hotel, bar and restaurant.
19. I have imposed an additional condition to restrict the use of the access at the rear of the building, which is necessary to safeguard the living conditions of those who live near the site at the rear.

Conclusion

20. For the reasons above, I conclude that the appeal should succeed. I will vary the planning permission by deleting the disputed condition and replacing it to extend the opening hours. I have also varied it by adding an additional condition to limit the use of the rear access for the reasons set out above.

A Tucker

INSPECTOR

¹ Ref 1104370