



Appeal Decision

Site visit made on 25 February 2025

by **G Sibley MPLAN MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 2nd April 2025

Appeal Ref: APP/L3245/W/24/3353316

The Old Mortuary, Smithfield Road, Shrewsbury, Shropshire SY1 1PG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a grant of planning permission subject to conditions.
 - The appeal is made by River Thai Restaurant & Bar against the decision of Shropshire Council.
 - The application Ref 24/01805/FUL was approved on 21 August 2024 and planning permission was granted subject to conditions.
 - The development permitted is change of use from restaurant to bar/venue.
 - The condition in dispute is No 4 which states that: A maximum of six amplified live performances to take place in the outside area within a calendar year (January to December) and to finish at 11:00pm, no DJ sets at any time.
 - The reason given for the condition is: To protect the amenity of surrounding residents and nearby hotel guests.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The appeal was submitted in the name of Mr Anthony Paterson of Venue 7 Ltd, but it was later confirmed that the applicant was River Thai Restaurant & Bar, and the appeal was made on its behalf. Furthermore, it was confirmed by the appellant that the condition in dispute was condition no 4.

Background and Main Issue

3. Planning permission was granted for the change of use of The Old Mortuary from a restaurant to a bar/venue. The building is located on the River Severn and has an outdoor area that overlooks the river. Near to the appeal site is a hotel as well as residential buildings. The reason given for the condition was to protect the amenity of surrounding residents and nearby hotel guests. The Council's concerns related to the noise disturbances that could occur related to amplified live performances and DJ sets held on the outside area that fronts the river. The appeal proposal seeks permission to use the venue without the condition in dispute.
4. Consequently, the main issue relevant to this appeal is whether condition no 4 in its current form is reasonable and necessary in the interest of the living conditions of nearby occupiers with regard to noise and disturbance.

Reasons

5. Based on the evidence before me the venue was undertaking events prior to planning permission being granted. Whilst the appellant may not have received an

official complaint from the hotel or nearby residents, the Council's Environmental Protection Officer has identified that there were several Service Requests in relation to noise disturbances arising at the venue concerning music played outside.

6. The Officer identified that they were able to hear music being played at the venue from nearby residential properties located a considerable distance away from the venue. Comments were also received regarding the application and this appeal which identified concerns with noise disturbances occurring late into the evening to a level that led to excessive noise exposure. Even if these Service Requests were received relatively recently, it is evident that concerns have been raised related to this matter by several different people.
7. Based upon the submissions to the application and the appeal noise from the venue can be heard in close proximity to residential buildings which can be sensitive to noise disturbances, especially when it occurs late in the evening or early in the morning. Without a condition controlling the number and finish time of amplified live performances on the outside terrace, the occupiers could be exposed to noise exceeding reasonable levels throughout the year at any time.
8. Consequently, it has not been shown on the balance of probability that the unrestricted use of the outside area would not create an unacceptable living environment for nearby occupiers. The occupiers would be unable to enjoy their homes without harmful disruption at any time throughout the day and this would harm their living conditions. As such, without the condition in dispute the development would conflict with Policy CS6 of the Core Strategy (CS) and Policy MD2 of the Site Allocations and Management of Development Plan (SAMDP) which seek, amongst other matters, to ensure all development safeguards residential and local amenity.
9. Taking into consideration the detail of the condition in dispute, ensuring live events end by 23:00 would ensure that those outdoor noise generating events would end at a precise time. This would ensure excessive noise exposure in nearby residential buildings would not occur late into the evening or early morning.
10. Given that the Service Requests related to concerns regarding DJ events or amplified performances that were occurring on the outside area then there is reasonable justification to seek to prevent them in the interest of the living conditions of the nearby occupiers. Whilst a sound system has been installed and a sound meter could also be installed to measure noise levels, I do not have robust evidence regarding what level the music volume should be to ensure noise disturbances did not occur to a level that would cause excessive noise exposure to nearby occupiers. As such, there is insufficient information before me that measures put in place to manage the sound system could be done in a precise and enforceable way.
11. The six live amplified performances would allow for the venue to provide events on the outside area which could support the business during its busiest period during the summer. The appellant states that the control over the number of live amplified events and DJ sets occurring on the outside area would make the business unviable but I do not have substantive evidence to support this stance.
12. Furthermore, the permission allows for indoor events to take place throughout the year with background music provided on the outside area. It is not evident that the

business would be financially unviable and isolated from the town unless live amplified events were permitted to take place unrestricted throughout the year.

13. While other event spaces may be able to operate more outdoor events, the appeal site is located close to sensitive noise receptors and given the limited supportive evidence over how noise disturbances could be managed, a condition controlling the number of amplified live outdoor events, and their finish time is necessary and relevant to planning in the interest of the living conditions of nearby occupiers.
14. Given that the venue seeks to operate live amplified events the condition is relevant to the development. The condition is precise setting out how many events can occur as well as when the events must finish and that no DJ sets are permitted at any time. As the condition set defined measures these are all matters that could be enforced.
15. Based on the evidence before me it is not clear that allowing unrestricted events to take place on the outside area would not cause harm to nearby occupiers' living conditions and the condition does still allow for some events to take place on the outside area as well as indoor events throughout the year. This would allow the venue to operate throughout the year and provide some outdoor events to support the ongoing operation of the business as a bar/venue. As such, the condition is reasonable in all other respects.
16. Whilst the Council may have agreed to the 'premises license' for the venue this is considered under separate legislation and as such is a separate matter to this appeal.
17. Therefore, for the reasons given above, condition no 4 in its current form is reasonable and necessary in the interest of the living conditions of nearby occupiers regarding noise and disturbance. Consequently, the condition passes the six tests set out in paragraph 57 of the National Planning Policy Framework and is reasonable and necessary in accordance with CS Policy CS6 and SAMDP Policy MD2 insofar as they seek to ensure all development safeguards residential and local amenity.

Conclusion

18. Therefore, for the reasons given above, I conclude that the appeal should be dismissed.

G Sibley

INSPECTOR