The Planning Inspectorate

Appeal Decision

Site visit made on 23 April 2013

by Matthew Birkinshaw BA(Hons) MSc MRTPI

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

Decision date: 17 June 2013

Appeal Ref: APP/H1033/A/12/2189410
The Gherkin, 90 Low Leighton Road, New Mills, High Peak, Derbyshire, SK22 4JG

- 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 Mr Suraj Shah (The Gherkin Sandwich and Coffee Shop Ltd) against the decision of High Peak Borough Council.
- The application Ref HPK/2012/0514, dated 5 September 2012, was approved on 29 October 2012 and planning permission was granted subject to conditions.
- The development permitted is described as 'Premises to be used as a Wine Bar in the evening (Daytime use as a Café & Sandwich Bar will remain unchanged)'.
- The condition in dispute is No.1 which states that: *"The use authorised by this permission shall be discontinued on the expiration of a period of 12 months from the date of this permission."*
- The reason given for the condition is: *"To allow the impact of the development on residential amenity to be assessed in accordance with Policy GD5 of the High Peak Saved Local Plan Policies 2008."*

Decision

1. The appeal is dismissed.

Planning policy

2. The Council has drawn attention to its document entitled 'High Peak Saved Local Plan Policies' (2008), which is taken from the High Peak Local Plan (adopted March 2005). The relevant policy, as cited by the Council, is GD5 (Amenity). Its general thrust is that development proposals should not create unacceptable levels of noise or traffic generation, such as to harm the living conditions of occupiers of nearby properties.

3. The objective of this policy is consistent with one of the Core Principles of the National Planning Policy Framework (2012), at paragraph 17, that planning should always seek to secure a good standard of amenity for all existing and future occupants of land and buildings. However, the Framework also encourages the delivery of facilities and services that meet local needs and sustain economic growth.

Main Issues

4. There are two main issues in this appeal. These are:

   1) whether it was reasonable to impose a temporary condition in the first place, in order to assess the effects of the evening use of the premises as a wine bar; and

2) whether permitting this evening use on a permanent basis would (a) significantly harm the living conditions of neighbouring residents, in terms of noise and disturbance; and (b) give rise to a significant increase in demand for on-street car parking space in the surrounding area, such as to be a cause of congestion, and irritation and nuisance for the neighbouring residents.

Reasons

Issue 1 – was it reasonable to impose the temporary condition?

5. Planning permission for use of 'The Gherkin' as a wine bar during the evening was granted subject to a condition restricting this use to a temporary period of 12 months. The consequence of dismissing this appeal is that the evening use of the premises as a wine bar would cease on 29 October 2013.

6. Circular 11/95, paragraph 111, states that where an application is made for permanent permission for a use which may be "potentially detrimental" to existing uses nearby, but there is insufficient evidence to enable the authority to be sure of its character or effect, it might be appropriate to grant a temporary permission in order to give the development a trial run. The proviso is that such a permission would be reasonable having regard to the capital expenditure necessary to carry out the development.

7. Although it is possible to grant permission for a further temporary period, paragraph 112 of the Circular advises that to do so is often poor practice. In many cases the development should either be refused or allowed in perpetuity.

8. In this case, the trial run was considered necessary for two reasons. Firstly, to assess the effect of the wine bar on the living conditions of neighbouring residents. Secondly, on the recommendation of Derbyshire Highways, the highway authority, to establish the demand for car parking, and whether there would be sufficient on-street capacity in the area for car-borne customers of the wine bar.

9. The appellant asserts that the condition is unreasonable as the appeal premises are surrounded by other commercial operators, and matters of noise and disturbance can be dealt with under separate legislation. He has not sought to extend the temporary permission for a longer period; his application sought the removal of the condition in order to make the use permanent. In his opinion, it is not possible to run a successful business with the temporary restriction.

10. I can understand the appellant's business concerns, but the evidence suggests to me that this was precisely the type of case envisaged by paragraph 111 of the Circular. Given the circumstances of this case, I conclude on the first main issue that the imposition of a condition limiting the permission to a temporary period of 12 months was reasonable.

Issue 2 – would permitting the evening use on a permanent basis give rise to significant harm?

11. 'The Gherkin' is a relatively small café, sandwich shop and wine bar which forms part of a cluster of commercial businesses focused around the junction of Laneside Road and the busy A6015.

12. Although there are residential properties within the immediate vicinity, the appeal premises are bounded on one side by a hair and beauty salon and on

the other by a tool hire business. Whilst these operators are unlikely to be open at the same time as a wine bar, they still provide some degree of separation between 'The Gherkin' and residential properties. There is also a large public house directly opposite, which, based on the evidence submitted, currently operates late into the evening.

13. Dealing first with noise and disturbance, local residents claim that the consumption of alcohol outside the appeal premises generates noise and disturbance which harms their living conditions.

14. The premises have a small outdoor seating area, which faces the main road and pub opposite. A condition of the planning permission for the wine bar use states that the use of this area for the consumption of drinks must cease by 22:00 hours. Additional conditions require the wine bar to close by midnight during the week and 23:00 hours on Sundays and Bank Holidays.

15. Although the representations show that nuisance from the wine bar and outdoor seating has occurred previously, concerns relate primarily to operations outside these hours, which – if they are in breach of the planning conditions - could be adequately controlled and enforced by the local planning authority.

16. Given the size of the wine bar and its seating area, combined with its location on a busy main road opposite a large pub, I am not persuaded that operating within these restrictions would lead to any significant harm to the living conditions of neighbouring residents.

17. Turning next to the demand for on-street parking space, I visited the appeal site and surrounding area on a weekday morning, so I have not observed the wine bar in use in the evening. I must therefore rely on the representations of the highway authority and local residents to gauge the effect of the traffic that is generated by this use.

18. There is no dedicated off-street provision for prospective customers of the wine bar. On-street parking restrictions prevent customers from parking directly outside the premises around the junction of Laneside Road and the A6015. Combined with the proximity of terraced housing, the opportunities for on-street parking in the immediate surrounding area appear to be limited.

19. Concerns regarding parking provision were identified by the highway authority at both the planning application and appeal stage. Moreover, representations from third parties also identify that the limited space and capacity for on-street parking has already given rise to competing demands for space between residents and customers of the wine bar.

20. I recognise that many of its customers might choose to walk to and from the wine bar or travel by taxi, rather than drive. However, the petition provided by the appellant shows that several customers do choose to drive.

21. The evidence suggests to me that the wine bar has resulted in an increased demand for the limited number of on-street parking spaces in the locality. This has given rise to added congestion on the local highway network as would-be customers drive around looking for an available parking space. It has created greater competition for on-street space, which has been a cause of irritation and inconvenience to the local residents in an area where demand for the limited amount of on-street space is already high.

22. I note the appellant's comments relating to the potential removal of parking restrictions in the vicinity of the appeal site. However, no information has been provided to demonstrate that a formal review of this Traffic Regulation Order has commenced, or that the review is likely to result in the removal of these restrictions. This is not a factor that carries much weight as a material consideration in this appeal.

23. I conclude on the second main issue that the evening use of the appeal premises as a wine bar gives rise to a significant increase in demand for on-street car parking space in the surrounding area, such as to be a cause of congestion, and irritation and nuisance for the neighbouring residents.

Other Matters

24. Other factors are cited by the appellant as relevant material considerations that support the permanent use of the appeal premises as an evening wine bar. These include the level of support that this use has attracted and the benefits it offers to the local area. The appellant also contends that other wine bars have opened in the area without being restricted by a temporary permission in the first place.

25. On the first point, I have no doubt that the use has proved popular with its customers, but those benefits do not outweigh the harm that it has caused to local residents.

26. On the second point, it is an established planning principle that each case is determined on its merits, having regard to the particular circumstances that apply. I am unaware of the factors that might have led to the approval of those uses and consequently, I have not given this matter significant weight in reaching my decision.

Conclusion

27. I have taken account of all the other matters raised. For the reasons given, the trial run has shown that the use of the appeal premises as an evening wine bar has given rise to significant harm and in so doing it conflicts with the objectives of the development plan and one of the Core Principles of the Framework. I therefore conclude that the appeal should be dismissed.

Matthew Birkinshaw

INSPECTOR