



Appeal Decision

Site visit made on 25 January 2010

by **Peter J Golder** Dip TP MRTPI

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

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Decision date:
18 February 2010

Appeal Ref: APP/Q0505/A/09/2111652

Nusha, 7a Cambridge Leisure Park, Clifton Way, Cambridge CB1 7DY

- 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 Mr Jorawar Bhangoon against the decision of Cambridge City Council.
- The application Ref 08/1581/FUL, dated 9 December 2008, was refused by notice dated 12 March 2009.
- The application sought planning permission for redevelopment to provide Class D2/A3 Leisure Facilities (including but not limited to a bowling alley, a multi screen cinema, a health and fitness centre and restaurants); multi-storey/surface car parking with amenity areas; hotel, housing, auction rooms (with ancillary offices); shops and incorporating pedestrian, cycle and public transport access, servicing and landscaping without complying with a condition attached to planning permission Ref C/98/0355/FP, dated 6 September 2000.
- The condition in dispute is No 31 which states that: the other units within the Leisure building shall not be open for trade with the public outside the hours 10.00-24.00 hours, save for a health and fitness centre, if included, which may be open for trade between 07.00 and 24.00 hours only on any one day.
- The reason given for the condition is: in the interests of the amenity of local residents.

Decision

1. I allow the appeal and grant planning permission for redevelopment to provide Class D2/A3 Leisure Facilities (including but not limited to a bowling alley, a multi screen cinema, a health and fitness centre and restaurants); multi-storey/surface car parking with amenity areas; hotel, housing, auction rooms (with ancillary offices); shops and incorporating pedestrian, cycle and public transport access, servicing and landscaping at Cambridge Leisure Park, Clifton Way, Cambridge CB1 7DY in accordance with the application Ref 08/1581/FUL, dated 9 December 2008, without compliance with condition number 31; **only in as far as it relates specifically to the opening hours at Unit 7A (Nusha)**; previously imposed on planning permission Ref C/98/0355/FP dated 6 September 2000, 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 conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) Unit 7A, a bar known as Nusha, shall not be open for customers outside the following hours:
 - 1000 to 2400 on Monday, Wednesday, Thursday and Sunday

- 1000 on Tuesday to 0130 on the following Wednesday morning
- 1000 on Friday to 0130 on the following Saturday morning
- 1000 on Saturday to 0130 on the following Sunday morning

Background

2. The appeal premises (Nusha) are operated as a bar and comprise one of several units forming the Cambridge Leisure Park. Planning permission for the Park was granted in 2000 subject to a number of conditions, among which No 31 required businesses with the exception of the Cinema to close for trading by midnight. The Cinema is permitted to remain open until 0230 hours on Saturday and Sunday mornings; although I understand that it rarely does so. I also understand that "The Junction", a music venue integral to, but not part of, the Leisure Park development is not restricted in opening hours; although the evidence is that they are not regularly open beyond midnight.
3. In November 2007 permission was granted for Nusha to remain open until 0130 hours on Wednesday, Saturday and Sunday mornings ie an extension of the previously permitted opening hours for Tuesday, Friday and Saturday. This was a temporary permission expiring on 1 December 2008, although the appellant's evidence is that the premises have been operating on this basis continuously since September 2008. The current application is for this to be allowed to continue. I understand that a premises licence for these extended hours was granted in August 2008.

Main issue

4. The Council's concerns are two-fold; firstly that to allow extended opening hours at Nusha has the potential to lead to a change in the character of the wider leisure park and secondly the proposal could give rise to an unacceptable level of noise and disturbance for local residents.

Reasons

5. The Council's concerns are encapsulated into two separate reasons for refusal which each rely upon different saved policies of the Cambridge Local Plan 2006 ie policies 3/6 and 4/13. Notwithstanding that approach I consider the two matters substantially interrelated and I take them together. In doing so I note that the sole justification for the imposition of trading hours (Condition No 31) in the original permission for the Leisure Park was for the protection of the amenity of local residents.
6. The Cambridge Leisure Park is a purpose-built multi-facility leisure and entertainment complex built on the site of the former cattle market. The Junction, a nightclub/music venue has been incorporated into the overall facility. Apart from the appeal proposal and "Subway" there appears to have been little enthusiasm among the Leisure Park operators for extended trading hours. Even among the major attractions at the Park such as The Junction and the Cinema, which I also noted had a number of other leisure uses such as a bowling alley and restaurants within its envelope, where there is the facility for extended operating hours, regular advantage does not appear to be taken of the additional flexibility.

7. This strongly suggests to me that the extension of hours at Nusha has not to date had any material affect upon the way in which the complex operates and I find little evidence which points to such an extension having any significant affect in this respect in the future. For this reason I consider the concerns of the Council and local residents about extended hours at Nusha having the potential to change the character of the Leisure Park from one which is described as family-orientated to one of a late night culture both unsupported conjecture and misplaced.
8. However even if extended hours at Nusha were to lead to some of the other operators opening for longer periods I am not persuaded that the "family-orientated" use of the complex would necessarily be weakened or undermined. There is nothing to suggest that the broad mix and range of uses, which are controlled by the original permission, are likely to change. It is the nature of these uses which have a fundamental bearing upon the character of the Park, its attractions and the way in which it is used. In my view any broadening of the customer base through extended opening is most unlikely to have any material impact upon the principal attributes of the leisure complex. In this respect I note that the Leisure Park management company is supportive of the extended hours in this case, as is the management of the Travelodge.
9. In as much as I consider the evidence points to it being unlikely that the proposal for extended hours at Nusha would give rise to any material pressure for extended hours elsewhere or encourage those who already have that flexibility to make further use of it, I believe it follows that the proposal is unlikely to give rise to a significant increase in patronage at the Leisure complex beyond midnight. Therefore, other than any additional noise and disturbance which may arise from Nusha, a matter I turn to shortly, I am not persuaded that there would be any serious prospect of further cumulative harm to local residents. In this matter I also take some reassurance from the cumulative zone impact policy operated by the relevant licensing authority. The Leisure Park falls within an area where the policy is applied and seeks to prevent the licensing of premises where there is likely to be a cumulative impact.
10. As to the likely specific impact of the proposed trading hours at Nusha I observed that the premises are well within the confines of the Leisure Park complex and close to car parking, taxi and drop off/pick up points. The bar is at the opposite extremity of the complex from the integral purpose-built and well-insulated residential units close to Cherry Hinton Road and well removed and separated from the older residential areas along Cherry Hinton Road and in Rustat Road and the newer developments on the far side of Hills Road. On site management, supervision and security would appear to be of a high order.
11. In my view these circumstances point to the likelihood of very limited amounts of noise and disturbance to local residents in their homes from either the bar itself or from its customers within the leisure complex. To my mind the greatest potential for impact upon living conditions arises once customers have dispersed from the Leisure Park and are either walking or cycling through the local area or using cars parked in nearby streets. Local residents point to occasional instances of anti-social behaviour leading to noise and disturbance which they suggest arise from customers of Nusha, although I am not aware of any records of formal complaints during the period the bar has operated

extended hours or documentary support for the instances of late-night incidents referred to by the Rustat Neighbourhood Association.

12. I accept that occasionally instances of late-night disturbance to local residents arise. The possibility that some are attributable to customers leaving Nusha cannot be ruled out. However, in areas where leisure and recreation facilities are concentrated disturbance may arise from a variety of other sources and for different reasons. In my view there is an absence of any conclusive or compelling evidence which firmly points to the present operation of Nusha as having any significant impact in terms of eroding the quality of the neighbouring residential environment. For these reasons I am not persuaded that there is a compelling case to conclude that permitting Nusha to permanently extend its operating hours as sought would have any appreciable or noticeable impact upon the levels of noise and disturbance experienced by local residents.

Conclusions

13. In summary therefore I do not consider the proposal to be in conflict with policy 3/6 of the local plan which seeks to ensure co-ordinated development and to safeguard the prospect of appropriate future developments. In this particular instance I find nothing to suggest that the future nature, characteristics and function of the Leisure Park would be harmed. Equally I find no material conflict with the intent of policy 4/13 which, among many matters, aims to protect living conditions in residential areas.
14. In reaching my conclusions I have also had regard to the decision of the Inspector who determined an appeal in June 2009 in respect of the proposed extension of trading hours at Nusha until 0200 hours each night of the week. In dismissing that appeal the Inspector sought to distinguish the proposal before him from the terms of the temporary permission granted in 2007. I agree with this view and have already indicated that what is now sought is essentially a continuation of the terms of that temporary permission. It is on the basis of these particular circumstances that I have determined this appeal and although noting what the officer's report says about a further temporary permission being granted I consider a sufficient period has lapsed to enable the matter to be fully assessed and to conclude that there no sound reasons for withholding a permanent planning permission.
15. Therefore, having regard to the reasons above and all other matters raised in the representations, I grant planning permission for the extended hours at Nusha and do so by adding a further condition to this effect to the original permission for the Leisure Park. This makes it clear that the condition refers only to Nusha and none of the other premises and that the other conditions imposed in 2000 continue to apply.

Peter J Golder

INSPECTOR