



Appeal Decisions

Site visit made on 12 October 2009

by **S R G Baird BA(Hons) MRTPI**

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

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**Decision date:
28 October 2009**

Appeal Ref: **APP/W4325/A/09/2110313**

Unit 2, Former Grange Bank Funeral Home, Grange Road, West Kirby, Wirral CH48 4DY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Bronzesign Limited against the decision of Wirral Metropolitan Borough Council.
- The application Ref APP/2009/5394, dated 1 April 2009, was refused by notice dated 22 May 2009.
- The development proposed is a change of use from Class A1 (Retail) to Class A4 (Wine Bar with Food) and the erection of an awning and associated external alterations.

Application for Costs

1. An application for costs was made by Bronzesign Limited against Wirral Metropolitan Borough Council. This application is the subject of a separate decision.

Decision

2. I allow the appeal, and grant planning permission for a change of use from Class A1 (Retail) to Class A4 (Wine Bar with Food) and the erection of an awning and associated external alterations at Unit 2, Former Grange Bank Funeral Home, Grange Road, West Kirby, Wirral CH48 4DY in accordance with the terms of the application, Ref APP/2009/5394, dated 1 April 2009, and the plans submitted with it, subject to the following conditions:
 - 1) the development hereby permitted shall begin not later than 3 years from the date of this decision;
 - 2) before the commencement of any works, a scheme for the provision of self-closing doors between the inside and outside of the premises hereby permitted shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details before the first use of the premises hereby permitted and retained and maintained thereafter;
 - 3) all windows shall remain closed between 21.30 hours and 12.00 hours daily;
 - 4) no live or recorded music or amplified voices shall be played in the outside areas of the premises hereby permitted;
 - 5) before the commencement of any works, a scheme showing details of the means of air conditioning and the ventilation and dispersal of cooking odours/fumes from the premises, sound attenuation measures associated with the means of air conditioning, ventilation and odour/fume

extraction, the position and finish of any external flues or external air conditioning plant and a programme of operation and equipment maintenance for all installed equipment shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be installed in its entirety before the first use of the premises hereby permitted and thereafter shall be retained, maintained and operated in accordance with the approved details;

- 6) the use shall not take place other than between the hours of 12.00 hours to 23.30 hours daily;
- 7) the outside area shall not be used for the consumption of food or drink between the hours of 21.30 hours and 12.00 hours.

Main Issue

3. The implications for neighbours' living conditions with particular reference to noise and disturbance.

Reasons

4. Unit 2 is located within the defined West Kirby town centre, where Unitary Development Plan (UDP) Policy SH1 indicates that the type of use proposed will be permitted where, amongst other things, it would not, on its own or in combination with similar uses, have an unacceptable effect on neighbouring uses in terms of cooking odours, noise and disturbance. The Council also refer to Supplementary Planning Document 3 – Hot Food Takeaways, Restaurants, Cafes and Drinking Establishments (SPD 3). This indicates that, when assessing the potential impact from noise and disturbance on neighbours, Class A4 uses should be at least 40m away from the main elevation of a dwelling.
5. Although the SPD indicates that it has been the subject of some, unspecified, public consultation and has been adopted by the Council, it is not part of the development plan. In these circumstances, although it is a material consideration, the weight I attach to it is substantially reduced.
6. I am aware that the Council's SPD has been published since the development of the existing eating and drinking establishments were developed. However, SPD is not a rule that must be applied inflexibly. It is guidance and each application has to be assessed having regard to the objectives of the development plan, the contents of the SPD, the location of the appeal site and the nature of its surroundings.
7. Here, Unit 2 is on the edge of the town centre located in an area of several restaurants, wine bars and hot food takeaways. Adjoining Unit 1, on the corner of Grange Road and Bridge Road, is The Wro, which serves food and drink and has a sitting out area to the front. On the opposite side of the road and adjoining No. 1 Riversdale Road, the nearest residential property to the appeal site, is The Wro Lounge, which also serves food and drink and which has a sitting out area to the front. The concentration of these types of uses here, given they serve a variety of different social functions, does not appear to be excessive.
8. The appellant's evidence showing the separation distances between the appeal site, existing food/drink uses and nearby houses is unchallenged. These show

separation distances between No. 1 and the adjoining bar/restaurant, The Wro Lounge, at some 10m, the appeal site at some 27m and The Wro on the junction with Bridge Road at some 25m. The gap to other dwellings on Riversdale Road and Grange Road would be well above 40m.

9. I appreciate there has from time to time there has been disturbance from existing late night uses in the area. However, on the evidence before me, which includes a Noise Report prepared by the appellant, there is nothing to support the assertion that the proposed use would materially add to noise levels in the area. Moreover, the potential for noise and disturbance can, in my view, be acceptably mitigated by imposing appropriate planning conditions. In these circumstances, whilst I conclude that the location of the proposed use in Unit 2 would conflict with the guidance contained in the SPD, it would not, on its own or in combination with the other existing uses, result in unacceptable disturbance to nearby residents through noise and disturbance. As such the proposal would not conflict with the objectives of UDP Policy SH1 or national planning guidance.

Conditions

10. In addition to the standard time limit, the Council has suggested 6 conditions. Given the proximity of residential uses, I consider the suggested conditions relating to hours of operation, the installation of air conditioning and fume extraction equipment, the provision of self-closing doors, controls over the opening of windows and the use of the external sitting area and the playing of amplified music are reasonable and necessary to protect the living conditions of nearby residents. In the interests of precision and enforceability, I have where necessary reworded the suggested conditions.
11. As to opening hours, the Council's suggested condition refers to the use operating between 12.00 hours and 24.00 hours. Although, I could see no opening times displayed at the existing nearby uses, the planning officer's report to the Planning Committee suggested a night time closing time of 23.30 hours, which would be consistent with nearby similar uses and which the appellant had accepted. The appellant's appeal statement confirms the reduced opening times. Accordingly, fixing hours of operation at between 12.00 and 23.30 hours is, in my view, reasonable to protect the living conditions of nearby residents.

George Baird

INSPECTOR