

Appeal Decision

Site visit made on 11 October 2016

by CD Cresswell BSc (Hons) MA MBA MRTPI

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

Decision date: 24 October 2016

Appeal Ref: APP/D0840/W/16/3153342

Hewas Inn, Fore Street, Sticker, St Austell PL26 7HB.

- 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 St Austell Brewery against the decision of Cornwall Council.
 - The application Ref PA16/02756, dated 22 March 2016, was refused by notice dated 11 May 2016.
 - The development proposed is change of use of part of garden to form a family pub garden.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect of the proposal on the living conditions of neighbouring occupiers having particular regard to noise and privacy.

Reasons

3. The appeal site is situated to the rear of the Hewas Inn and comprises part of an existing garden. It appears to be mainly used for domestic purposes, although I understand that it has been used for hosting some commercial events in the past. As the site abuts the rear gardens of neighbouring dwellings, the immediate surroundings maintain peaceful and residential characteristics, despite the presence of the public house.
 4. Although the proposed seating area would be available for all customers to use, it is argued that it would be mainly for eating meals and accommodating families. Even so, there would inevitably be some potential for noise to be generated, including through raised voices and laughter. Whilst the seating area would only occupy a proportion of the garden, it would nonetheless be large enough to contain a number of tables. Hence, at times when the seating area is near full capacity, there would be potential for the levels of noise and activity to be substantial. Even during less busy periods, the continuous use of the site for outdoor seating would have the potential to generate a level of noise well over and above that presently experienced.
 5. The appeal site is in close proximity to both Dormouse Cottage and Levalsa. The rear garden of Dormouse Cottage contains a paved area that can be used by the neighbouring occupiers for sitting outside. There are also rear facing windows, including a first floor bedroom window which directly overlooks the
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appeal site at relatively close quarters. Similarly, Levalsa has windows facing the appeal site and a rear garden running along the site boundary. Given this close physical relationship, noise being generated from the proposed seating area is likely to be clearly audible from the gardens of the neighbouring properties. Depending on the degree of noise, there would also be some potential for the sound to be audible from inside the dwellings themselves (particularly if the rear windows were open).

6. Even though the proposed seating would not remain open beyond 21:00 at night, noise could potentially reach levels where it would harm the enjoyment of neighbouring gardens during the daytimes and evenings, particularly if the occupiers wish to sit outside. At peak times, the noise may also reach levels where it would be sufficient to force neighbours to close rear windows. While the proposed seating is only likely to be well used during the summer months, this corresponds with the times when neighbours are more likely to open windows or linger in their gardens.
7. Although downward views into the rear garden of Dormouse Cottage could be screened by a fence or hedge, the first floor bedroom window of that property would directly face the proposed seating area. Though the bedroom is unlikely to be in constant use during daylight hours, the prospect of customers sitting in close proximity to the window would inevitably undermine the privacy of this room to a certain extent. While my decision does not turn on this matter, it gives additional weight to my conclusion that the proposal would harm the living conditions of neighbouring occupiers.
8. Although the appellant has provided a list of public houses in Cornwall where dwellings surround outdoor seating areas, it is unclear whether these were established as a result of planning permission or are historic arrangements. Whilst paragraph 123 of the National Planning Policy Framework (the Framework) states that businesses should not have unreasonable restrictions placed on them, it also identifies the need to protect amenity areas which have remained relatively undisturbed by noise. In this case, I have found that the proposal would potentially disturb the peaceful nature of the gardens and private areas to the rear of neighbouring dwellings. With this in mind, I am particularly conscious that one of the core principles of the Framework is to always seek to secure a good standard of amenity for all existing and future occupants of land and buildings.
9. I note that the rear garden of the Hewas Inn has been licenced to host events in the past, including a beer festival. However, the impact of individual events on neighbouring occupiers would be less harmful than use of the garden for commercial purposes on an ongoing, continual basis throughout the week.
10. I am aware that the Council previously granted permission¹ for the operating hours of an existing outdoor seating area at the Victoria Inn in Threemilestone to be extended from 11:00–14:30 to 11:00–21:00. Whilst the area surrounding the Victoria Inn is densely developed, there is little evidence to demonstrate that the physical relationships between nearby dwellings and the outdoor seating area are directly comparable to the appeal proposal. Furthermore, the Victoria Inn application sought to vary the terms of an existing seating area whereas the Hewas Inn proposal seeks to introduce a new seating area in an area that is characterised by domestic garden space.

¹ Council Ref: PA12/06379

11. I therefore conclude that the proposal would have a harmful effect on the living conditions of neighbouring occupiers. There would be conflict with Policy 37 of the Restormel Local Plan 2001 which aims to prevent developments that cause harm due to noise. There would also be conflict with paragraphs 17 and 123 of the Framework which, amongst other things, aim to secure a good standard of amenity for occupiers.
12. For the above reasons, and having regard to all other matters raised, I therefore conclude that the appeal should be dismissed.

CD Cresswell

INSPECTOR