
Appeal Decision

Site visit made on 10 October 2016

by Rachel Walmsley BSc MSc MRTPI

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

Decision date: 31st October 2016

Appeal Ref: APP/C4615/W/16/3153663

Red Lion Public House, 147 Brettell Lane, Brierley Hill, Dudley DY8 4BA

- 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 Mr P Guy against the decision of Dudley Metropolitan Borough Council.
 - The application Ref P16/0350, dated 10 March 2016, was refused by notice dated 12 May 2016.
 - The development proposed is the erection of a marquee and decked seating area to rear garden.
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Decision

1. The appeal is dismissed.

Procedural matter

2. At the time of my site visit, the proposed development existed on site. I have based my decision on what I saw on site, together with the submitted plans and details.

Main Issue

3. This is the effect of the proposal on the living conditions of the occupiers of residential properties nearby, with particular regard to noise and disturbance.

Reasons

4. The starting point for the consideration of this appeal is the development plan. Saved policy DD4 of the Local Plan¹ seeks to ensure that development does not have an adverse effect on residential amenity and Saved policy EP7 requires development that is expected to generate noise to include measures to minimise noise emissions.
5. The marquee is to the rear and within the garden of the Red Lion Public House. Inside the marquee are tables and chairs, patio heaters and lights. Notwithstanding the premise's licencing hours, the evidence before me points to the public house being open to midnight three days a week and 11pm four days a week.
6. Noise from customers in the marquee has been detected approximately 50 metres away. Within 50 metres of the appeal site are residences, including

¹ The Dudley Borough Unitary Development Plan (Adopted 15 October 2005)

residential flats. It is reported that noise from the marquee is audible within these living spaces.

7. The marquee provides shelter from the elements, warmth via the heaters, and light for night-time. Compared with an area of the beer garden without a marquee, customers can dwell outside for longer and until closing given the more comfortable environment that the marquee offers. This in turn increases the potential for conflict between customers socialising and residents seeking peace and quiet at the later hours of the day. The evidence before me supports this finding; complaints about noise and disturbance have increased since the marquee existed on site.
8. In addition, the marquee is required to increase comfort to patrons and to attract more people to the premises. The marquee, therefore, will intensify the use of the beer garden which in turn, will increase noise levels and exacerbate the harm identified to the living conditions of the occupiers of residential properties nearby.
9. Paragraph 123 of the National Planning Policy Framework (the Framework) acknowledges that some noise from existing businesses is inevitable. It also recognises that planning decisions should not unreasonably restrict a business wanting to develop because of changes in nearby land uses since the business was in situ. I have no reason to doubt that the public house operated before the residential properties existed and that the marquee would help increase profitability as set out in the appellant's evidence. However, I have not been convinced that the marquee is essential to business needs and the continued operation of the public house. Weighed against this is the harm that I have identified to the living conditions of occupiers of residential properties nearby. On balance, I find that the benefit to the business carries insufficient weight to overcome the harm identified.
10. I note that security staff are employed to control nuisance behaviour and limit noise levels and it is suggested that noise from the marquee could be controlled in the same manner. I have given consideration to a planning condition this effect, however, the evidence before me confirms that noise is a continuing problem, despite staff being employed to control it. In light of this and the tests set out in paragraph 206 of the Framework, a condition to this effect would be difficult to enforce; that is to detect when a member of staff was and wasn't controlling noise levels and as a result would not mitigate the harm identified.
11. I have considered the appellant's suggestion of restricting the use of the marquee to 11pm every day; three hours less than current hours of operation. Three hours within a week, however, would be a negligible reduction in the hours and to 11pm every day would give residents little time in the evenings for peace and quiet. A condition to this effect, therefore, would not help make the development more acceptable.
12. In all, therefore I have found that the marquee has a harmful effect on the living conditions of the occupiers of residential properties nearby, with particular regard to noise and disturbance. Furthermore, I have found that the noise and disturbance emanating from the change of use could not be minimised by appropriate mitigation measures. As a result the proposal would be contrary to Saved policies DD4 and EP7 of the Local Plan.

Conclusion

13. For the reasons given above, I have found that the development would be contrary to the development plan and therefore the appeal is dismissed.

R Walmsley

INSPECTOR