
Appeal Decision

Site visit made on 4 January 2017

by Claire Searson MSc PGDip BSc (Hons) MRTPI IHBC

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

Decision date: 26 January 2017

Appeal Ref: APP/Q3060/W/16/3159473

The Boulevard, 117 Hartley Road, Nottingham, NG7 3AQ

- 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 K Hagi against the decision of Nottingham City Council.
 - The application Ref 16/01343/PFUL3, dated 7 June 2016, was refused by notice dated 2 August 2016.
 - The development proposed is a smoking shelter and alterations to buildings and outbuildings to create Shisha bar.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. I have taken the description of the appeal proposals from the Council's decision notice as this better reflects the full scope of the work proposed which includes the creation of a smoking shelter and associated change of use.
3. At my site visit I saw that a canopy structure has already been erected however, this does not match the structure proposed as part of this appeal in terms of its location, height and materials. For the avoidance of doubt I confirm that my determination of the appeal is based on the drawings submitted and not on the works as constructed.

Main Issues

4. The main issues are the effect of the proposed development upon (a) the living conditions of neighbouring occupants with particular regard to noise and disturbance and (b) the character and appearance of the area.

Reasons

Living Conditions

5. The Boulevard is a large period property located on the corner of Hartley Road and Radford Boulevard. Its upper floors have been converted into flatted residential accommodation and to the ground floor is a restaurant.
 6. To the rear is a small courtyard area and car parking, accessed via Radford Boulevard. Beyond the appeal site is a large open area of hardstanding which is currently used as a hand car wash. There are residential dwellings along Hartley Road, Radford Boulevard and Garfield Road in proximity with the site. The proposed hours of use would be varied between 11am and 12.30am over a
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- 7 day period. The design of the structure would be open in order to comply with separate regulations pertaining to smoking shelters.
7. Notwithstanding the dispute between parties in respect of whether the proposed shelter would form part of the extant restaurant business or whether it would operate independently from this, I consider the proposed development would be likely to result in significant disturbance to neighbouring residential properties on Hartley Road and Garfield Road. This is due to the design and open nature of the development in combination with the proposed hours of operation.
 8. I accept that some of the accommodation within The Boulevard which would face the proposed development would comprise of laundry rooms to which there would be no adverse effect. However, I am also concerned in respect of impacts from the development upon Flat 101 and Flat 201. Both units have windows serving the only habitable rooms within the accommodation which would directly overlook the proposed Shisha smoking area.
 9. I understand that sound insulation has been installed, however this was required to mitigate impacts in respect of existing adjacent uses and road noise. The creation of a Shisha smoking area would generate even greater levels of disturbance and in combination with the scale and configuration of both of these flats, I consider it likely that there would be adverse impacts from the development, particularly when occupants would open their windows for ventilation. This would cause harm to staff using the accommodation or any future occupants.
 10. My concerns would not be overcome to any meaningful degree through any restriction on the sale of alcohol and I consider that any social use of this area for people to meet and smoke Shisha would generate significant levels of noise and disturbance.
 11. I am, however, satisfied that noise impacts would be limited for properties on Radford Boulevard due to the distance between the proposed development and these dwellings and I do not consider that the development would give rise to a significant volume of vehicular movements over and above current levels.
 12. While I note that other uses in the vicinity also give rise to disturbance, I am also mindful that they are limited in their hours of operation in order to restrict the noise and disturbance arising from these uses. Furthermore, the presence of other such development should not justify further erosion of the living conditions of neighbouring residents.
 13. On this matter, I therefore conclude that the development would give rise to noise and disturbance which would cause harm to the living conditions of neighbouring residents. The proposals would therefore conflict with Policy 10 of the Aligned Core Strategy 2014 (ACS) and saved Policy NE9 of the Nottingham Local Plan 2005 (LP), which seek to limit impacts of noise pollution upon residential amenity.

Character and Appearance

14. The proposed Shisha smoking shelter would infill and enclose the courtyard area between a rear outbuilding and store rooms connected to The Boulevard at ground floor level. The outbuilding would also be altered in order to provide a further seating area.

15. The proposed shelter would have a felt monopitch roof supported on timber posts. It would be enclosed at the end (south) elevation by a perforated metal grill to allow for air circulation, but to provide security.
16. The shelter would have the appearance of a temporary structure which would infill between the flat roofed store rooms and separate outbuildings with a mono-pitched roof. The height and roof design in comparison to the existing store and outbuilding would create a complicated arrangement of roof structures which would be particularly awkward and clumsy. I find that the addition of the proposed shelter would add visual clutter and draw the eye. This effect would be compounded by the proposed materials including a metal grill and overall the development would give rise to an intrusive addition to the rear courtyard area of The Boulevard.
17. The incongruous nature of the development would be highly prominent in the street scene when viewed along Radford Boulevard across the low wall and parking area. This would therefore be particularly conspicuous, causing harm to the character and appearance of the area.
18. The appellant contends that the design of the shelter did not form part of the Council's reasons for refusal on a previous application and therefore should be discounted. I have no details of the previous application in respect of its design, however effects on character and appearance are a legitimate planning consideration and this is a matter before me whereby I have also found harm.
19. It has also been put to me that the shelter could usually be erected as permitted development. However, it is not clear to me which part of the Town and Country (General Permitted Development) Order 2015 to which the appellant refers. In any case, no such permitted development rights exist in respect of the use and as such this would not represent a fallback position to which I can attach any weight.
20. I therefore conclude that the development would cause harm to the character and appearance of the area. The proposals would not therefore be supported by ACS Policy 10 which requires that development should make a positive contribution to sense of place, create an attractive environment and reinforce valued local characteristics.

Other Matters

21. It is understood that the appellant entered into correspondence with the Council prior to the submission of planning applications at the site. However, I have no reason to consider that the alleged advice was anything other than informal and any advice given would not have prejudiced the Council's formal decision on the planning application. In any event, it falls to me to assess the merits of the proposed development based upon the information before me.

Conclusion

22. For the reasons given above, taking into account all other matters raised, I conclude that the appeal should be dismissed.

C Searson
INSPECTOR