
Appeal Decision

Site visit made on 6 June 2017

by Gareth W Thomas BSc(Hons) MSc(Dist) PGDip MRTPI

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

Decision date: 13th June 2017

Appeal Ref: APP/X1165/W/17/3168794

The Vigilance Public House, 5 Bolton Street, Brixham, Devon TQ5 9DE

- 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 JD Weatherspoon Plc against the decision of Torbay Council.
 - The application Ref P/2015/1174/PA, dated 27 November 2015, was refused by notice dated 4 August 2016.
 - The development proposed is use of the land as a beer garden (Use Class A4) and other associated works in connection with the Vigilance Public House.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue in this appeal is the effect of the proposed development on the living conditions of occupiers of neighbouring residential properties in terms of noise and disturbance.

Reasons

3. The Vigilance Public House is located on Bolton Street and within the Brixham Town Conservation Area. To its side is an entry that opens up into a large vacant area of underused land the subject of this appeal that contains two mature trees. Beyond this vacant parcel to the rear is a service delivery yard to the pub and parking area accessed from Glenmore Road. The appeal site comprises a derelict parcel of land and sits at the same level as the street and is bound by the walls of the pub, the garden boundary wall and the retaining walls of the parking/servicing area off Glenmore Road.
 4. The vacant area extends to the rear of No's 7 and 7a Bolton Street, two residential flats above the adjoining flower shop. There are views from the windows and outdoor areas of these dwellings into the well of this vacant parcel of land. Beyond the parking area to the south-west is The Old Pottery, a dwelling fronting Glenmore Road. Views into the well of the vacant area are also possible from first floor windows and patio area. Further to the south lies an intense concentration of housing.
 5. The proposal would see the introduction of an outdoor seating area, partially covered by canopy structures with a decked floor arrangement required in part to overcome the gradients to the rear. The area of decking would be entirely
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covered to the east side of the space, as would be 2m strip along the western retaining wall. The canopies would be monopitched to maximise light penetration and designed in accordance with recommendations of the appellant's noise consultants. Access to the garden from the pub would be via two new openings in the southern flank wall of the building. The two canopies would be linked by a planted pergola. Two new trees would replace those lost.

6. The Council's concerns stem from the close proximity of the appeal site to residential properties that also directly overlook from a higher level the land in question. It is felt that consumption of alcohol outside the appeal premises would generate unacceptable levels of noise and disturbance thereby leading to harms to living conditions. The Council contends that noise generated by talking and laughter can be particularly intrusive even at very low levels. Further such noise is difficult to manage or resolve through engineered solutions. The Council's Environmental Health Officer (EHO) predicts that such noise would probably amount to a statutory nuisance under environmental health legislation.
7. An appeal¹ for the change of use of this area for use by the Vigilance PH as an outside drinking area between the hours of 1100 and 2100 hours each day was dismissed in 2002. Whilst the details are not before me, the Inspector concluded that such a use would be in such close proximity to existing dwellings that unacceptable loss of amenity would occur. From the Inspector's report at the time, the appellant proposed an acoustic screen as a means of reducing potential noise and disturbance particularly to one of the closest property along Glenmore Road. However, I am not aware whether the Inspector's had before him any specific acoustic evidence.
8. A noise assessment report is however presented as part of this appeal, which recognises that there is no accepted method of assessment for this type of activity although reference is made to not exceeding the guideline absolute noise levels listed in the World Health Organization (WHO) Guidelines for Community Noise 1999. The acoustic survey has informed the design of the two canopies that are proposed. The Council's EHO's observations suggests that the WHO guidelines relates to ambient noise and is not generally intended to assess noise with specific characteristics or noise arising from specific sources. This is not disputed by the appellant.
9. From the evidence, I am satisfied that during both normal and infrequent peak trading, noise levels from the proposed beer garden would be lower than the WHO daytime annoyance criterion at the nearest noise sensitive residential receptor. Moreover the appellant company through experience of operating such activities across the UK over many years has refined its management of outside drinking areas and has agreed to a further restriction of operating hours so that the use would cease at 2000 hours.
10. However, I also accept that noises containing information such as voices can be particularly intrusive even at the very low levels predicted here. In addition, the control mechanisms offered through even the most careful of management regimes appear to me to be reactive rather than pro-active and would not be sufficient to mitigate against the characteristics of noise from specific sources that would emanate from such a facility such as talking and laughter. Given

¹ APP/X1165/A/02/1088042

the relatively large number of customers that could be accommodated, loud conversations, laughter and boisterous behaviour would be difficult to control.

11. From my observations of the site and its surroundings, the most affected properties are elevated above the appeal site and in very close proximity which would heighten sensibilities and annoyance. The suggested hours of operation would coincide at a time when young families would wish to use private amenity areas.
12. I am therefore satisfied that the proposal would cause significant harm to the living conditions of occupiers of these properties that clearly overlook the site through noise and disturbance. Consequently, the proposed development would be contrary to Policy DE3 of the Torbay Local Plan 2012-2030 (TLP), which requires all development to be designed so that they do not unduly impact on the amenity of neighbouring uses, particularly in terms of noise and other impacts on existing living conditions. This policy is consistent with paragraph 123 of the National Planning Policy Framework.

Other matters

13. The appeal site is within the Brixham Town Conservation Area (CA) and I have had regard to the fact that Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special attention be paid to the desirability of preserving or enhancing the character or appearance of a conservation area.
14. Although I have not been supplied with any description or appraisal of this CA as part of the appeal, from my own observations, the area is characterised by uniform terraced blocks of development located along historic routes leading down to the harbour. The earliest buildings are set around the harbour behind which are narrow streets before reaching historic transport routes that climb steeply from the town centre. The significance of the CA in part is derived from its historic harbour and setting, its strong townscape character but throughout a feeling that buildings are set within the hillside landscape.
15. The appeal site appears as an unkempt vacant space situated at a lower level than the adjoining highway to the rear of the pub. At this location, there is a variety of buildings located to the rear of commercial buildings fronting Bolton Street. From higher levels including Parkham Road, the two trees that occupy the centre of the appeal site make a significant contribution to the appearance of the CA. However, I am cognizant of the quality of these two trees in terms of their arboricultural value and am satisfied that replacement trees as proposed would offer an attractive alternative.
16. There is no question that the design of the outdoor seating area including the two canopies is of a high standard. It would bring into use a poorly maintained space at a prominent location when viewed from the west.
17. I would conclude that the proposed development would preserve the character and appearance of the CA. Accordingly, the proposal would comply with TLP Policy DE3, which seeks to ensure that new developments are designed to not adversely affect the character or appearance of the area. It would also be in compliance Policy BE5 of TLP as detailed in the appellant's heritage statement that reflects section 12 of the National Planning Policy Framework, particularly

the need for developments to preserve or enhance the character or appearance of the CA and ensure that any changes are sympathetic.

Conclusion

18. Although I have found that the development would at least preserve the appearance of the Brixham Town CA and thus its significance, this does not outweigh the harm that I have identified to the effects of the proposed development on the living conditions of occupiers of nearby dwellings. Accordingly for the reasons set out above and having regard to all other matters raised, I conclude that this appeal should be dismissed.

Gareth W Thomas

INSPECTOR