



Appeal Decision

Site visit made on 18 July 2017

by Stephen Normington BSc DipTP MRICS MRTPI FIQ FIHE

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

Decision date: 1 August 2017

Appeal Ref: APP/Q3060/W/17/3173775

The Pillar Box, 566 Mansfield Road, Nottingham NG5 2FS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Ms Vera Todorovic against the decision of City of Nottingham Council.
 - The application Ref 16/01885/PFUL3, dated 4 August 2016, was approved on 17 October 2016 and planning permission was granted subject to conditions.
 - The development permitted is described as the proposed change of use from A1 retail for former Post Office at 566 Mansfield Road, including exclusive use of rear yard for patrons seated at tables when weather permits up to 21.30 in summer, to joint A3-A4 Café Bar to allow premises to be used as an exclusive wine-spirit bar serving select wines and spirits and premium beer and cider; hot beverages and light snacks, pre-cooked pastries, cakes etc.
 - The condition in dispute is No 2 which states that: "*The external rear yard of the premises shall not be used by customers for any purpose at any time.*"
 - The reason given for the condition is: "*To safeguard the health and residential amenity of the occupants of nearby residential accommodation to comply with Policies S6 and S7 of the Nottingham Local Plan.*"
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Decision

1. The appeal is dismissed.

Background and Main Issue

2. The condition in dispute relates to a planning permission granted for the change of use of a former A1 retail premises to an A3/A4 café-bar. The condition prevents the use of the rear yard of the premises by customers at any time. The appellant seeks the removal of the condition and its replacement with a new condition that permits the use of the rear yard for patrons seated at tables during the hours of daylight up to 21.30 hours in high summer subject to the landscaping of the rear yard, prevention of the installation of any external lighting, prevention of the use of amplified music and the provision of a dedicated phone line for any noise/disturbance complaints.
3. The main issue is whether the disputed condition is necessary and reasonable having regard to the effect of the use of the rear yard on the living conditions of the occupiers of nearby properties with particular regard to noise and disturbance.

Reasons

4. The appeal site comprises the enclosed rear yard of a three storey terraced property. The ground floor is in use as a café/bar with a residential unit on the floors above. The yard also contains a single storey outbuilding that is used for storage purposes associated with the café/bar use. The site is located towards the centre of a terraced block that has retail/commercial uses on the ground floor with residential units above with similar enclosed rear yards. The residential units are predominantly accessed via external stairs served from a service road located to the rear of the yards.
5. The adjacent residential unit to the north at No 568 Mansfield Road has a rear single storey flat roof extension, the roof of which serves as an outdoor amenity area for the occupants of the residential unit of this property. This is accessed by an open tread external stair. I observed at my site visit that both this staircase and amenity area on the roof of No 568 are situated in close proximity to the appeal site and have views over it. It was clear that this amenity area is well used by the occupants of the property. The adjacent property at No 564, to the south, also has an extension with part of the roof providing a small outdoor amenity area for the occupants of the residential unit.
6. Given the proximity of the residential uses to the appeal site, and in particular the open nature of the stairs and outdoor amenity area serving No 568, it would not be reasonably possible to provide acoustic and visual screening of the yard of an extent that could minimise occurrences of unacceptable noise and disturbance being emitted from customers using it. In any event, such screening, if at all possible, would likely need to be erected in close proximity of the stairs and amenity area of No 568 on property which may not be wholly within the control of the appellant and which would likely create an oppressive sense of enclosure for the users of the amenity area. I have no details of the nature and extent of any screening proposed but, in my view, screening within the appeal site would neither be practical nor effective in this case.
7. I have taken into account the appellant's suggested condition that proposes to restrict the hours of use of the rear yard to 21.30 hours in the high summer and prevent any lighting or amplified music. However, even with this restricted use and limiting the number of tables, the enclosed yard has considerable potential to generate unacceptable noise and disturbance at a time when nearby residents could expect to enjoy the use of the limited rear amenity areas that provide a degree of respite from the noise associated with heavily trafficked Mansfield Road to the front.
8. Consequently, although the alternative condition suggested by the appellant would, to some extent, be enforceable it would not overcome the potential for the use of the rear yard by customers to generate unacceptable levels of noise and disturbance associated with loud voices and furniture being moved occurring in such close proximity to outdoor private amenity areas.
9. I also note that the use of the rear yard would result in an improvement to its current visual appearance and a relocation of waste storage facilities. Whilst these benefits weigh in favour of the use of the rear yard, they do not outweigh the harm that would be caused to the living conditions of the occupants of the nearby residential properties as a consequence of noise and disturbance.

10. The disputed condition as worded does not preclude the use of the rear yard by staff accessing the storage building or the proposed waste storage area or indeed its use as a staff recreational area during breaks. I also agree with the Council that the condition would not prevent access through the yard to the rear service road as a means of egress by customers in the event of an emergency.
11. I have taken into account the fact that the appellant would wish to use the rear yard on the basis of the principles of the Quiet Garden Movement and the fact that no objections were received to the application for a Premises Licence. Although no amplified music would be played, this has little influence on the harm that would be caused to the living conditions of the occupants of nearby properties, and in particular those at No 568, as a consequence of raised voices, noise and disturbance occurring in an enclosed space immediately adjacent to the outdoor private amenity area. In addition the absence, or otherwise, of objections to a Premises Licence has little bearing on the planning considerations in this appeal.
12. I conclude that the disputed condition is reasonable and necessary in the interests of ensuring that the living conditions of the occupants of residential nearby properties are preserved, with particular regard to noise and disturbance. Without the condition the change of use would be contrary to Policy 10 of the Greater Nottingham Aligned Core Strategies Part 1 Local Plan (2014) (ACS) and Policies S6 and S7 of the Nottingham Local Plan (2005). These policies, amongst other things, indicate that proposals for changes of use from retail to food and drink uses will be granted planning permission where there would be no harm to the living conditions of nearby residents or where the effects of noise and disturbance can be adequately controlled by means of a planning condition.
13. The Council has also referred to a conflict with Policy 11 of the ACS. However, I have no evidence to indicate the requirements of this policy or how the removal of the disputed condition and its replacement with an alternative condition on the lines suggested by the appellant would conflict with its provisions. Consequently, I have afforded no weight to a conflict with Policy 11 of the ACS in the determination of this appeal.

Conclusion

14. For the above reasons, taking into account the development plan as a whole based on the evidence before me and all other matters raised, I conclude that the appeal should be dismissed.

Stephen Normington

INSPECTOR