



Appeal Decision

Site visit made on 11 July 2017

by Andrew McCormack BSc (Hons) MRTPI

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

Decision date: 22 August 2017

Appeal Ref: APP/Y2003/W/16/3162101

27 Low Street, Haxey, Doncaster DN9 2LA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Kenneth J Embleton against the decision of North Lincolnshire Council.
 - The application Ref PA/2016/1463, dated 12 September 2016, was refused by notice dated 19 October 2016.
 - The application sought planning permission for change of use to form guest house, an extension to the existing first floor accommodation to form a bathroom and alterations within the existing front garden to form a small car park without complying with a condition attached to planning permission Ref PA/2014/0419, dated 11 February 2015.
 - The condition in dispute is No 3 which states that: The property known as Stanhope (i.e. 27 Low Street, Haxey) shall be used as a guest house and for no other purpose (including any other purpose within Class C1 of the Schedule to the Town and Country Planning (Use Classes Order) 1997), or in any provision equivalent to that Class in any Statutory Instrument revoking and re-enacting that Order with or without modification.
 - The reason given for the condition is: In the interests of safeguarding the amenities of the area and to ensure compliance with Policy R14 of the North Lincolnshire Local Plan 2003.
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Decision

1. The appeal is dismissed.

Background and Main Issues

2. The appeal follows the granting of planning permission Ref PA/2014/0419, dated 11 February 2015 and relates to the subsequent application to vary an attached Condition relating to a restriction on the use of the appeal property with regard to a pop-up tapas restaurant. The Council refused the subsequent application Ref: PA/2016/1463 on 19 October 2016 on the grounds that varying the relevant condition (No.3) would result in an adverse impact on the living conditions of neighbouring occupiers with regard to noise and highway safety. An appeal was lodged against that decision. The appeal therefore seeks the variation of the Condition to allow for a pop-up tapas restaurant at the appeal property. It is against this background and on this basis that I have determined the appeal.
3. Therefore, the main issues are the effect of the proposal on:
 - the living conditions of neighbouring occupiers, with regard to noise and disturbance; and
 - highway safety and parking.

Reasons

4. The appeal property is a large detached building set back from the public highway with car parking provided within the site and to the front of the building. The property is in use as a guest house with the applicant also residing on the site. It is situated between residential properties and is opposite a public house which, at the time of the site visit, appeared to be unoccupied. The site is accessed directly from Low Street and the proposed pop-up tapas and restaurant would operate within a ground floor room at the front of the appeal property.

Living conditions: noise and disturbance

5. The Council argues that the proposed use of a pop-up tapas and restaurant would have the potential to generate activity late into the night and the early hours of the morning. Furthermore, with such a use, there would be a significant level of noise and disturbance generated when guests arrive and leave resulting from such activity as people talking loudly, laughing, the slamming of car doors, car radios playing and car engines revving. As a result, it is argued that the proposal would have a significant impact on neighbouring occupiers in terms of noise and disturbance, particularly when patrons would be leaving at the end of an evening.
6. The appellant states that customers would be vetted as far as is reasonable to ensure that those entering and exiting the premises would have regard to the impact on neighbours. However, in my view, this would be difficult to achieve and it would be unrealistic and unreasonable to expect the appellant to be able to control the activities and actions of their customers in such circumstances. Furthermore, I find that the noise generated by the activities of patrons would be likely to extend beyond the appellant's premises and on to Low Street.
7. I note that the appellant has sought the number of customers for the tapas and restaurant to be limited to 16 covers in order to limit the impact on neighbours. However, I find that such a number would have the potential to have a significant adverse effect with regard to noise and disturbance, not only in terms of the number of patrons but also the noise generated by significant vehicle movements when arriving and leaving not only the appeal site but also the wider area due to vehicles likely to be parked on Low Street.
8. Having had regard to the above, I find that the proposal would result in an inappropriate development which would have a significant adverse effect on neighbouring occupiers with regard to noise and disturbance. The proposed use would generate noisy activity such as loud voices, car doors slamming and engines running at the appeal property when patrons arrive and leave, potentially at times late into the evening and early morning. Furthermore, I find that such impacts would be difficult to control and enforce through planning conditions.
9. Consequently, I conclude that the proposed variation of the disputed condition would have a significantly adverse impact on the living conditions of neighbouring occupiers with regard to noise and disturbance. It would therefore be contrary to Policy DS1 of the North Lincolnshire Local Plan 2003 (LP). Amongst other matters, this policy seeks to ensure that development has no significant detrimental effect on neighbouring land uses such as noise.

Highway safety and parking

10. During the site visit, which was in the mid-morning, I noted that there was a significant amount of on-street parking along Low Street which has a mix of retail and residential use. I found that a small number of vehicles had parked only for a

short period of time to call at the nearby local shop. The majority of the other vehicles which I saw were parked in situ for the duration of my site visit.

11. Having given due consideration to this, I find it reasonable to consider that at other times of the day, such as in the evening, there would be more vehicles parked on the street in relation to residential properties as residents return home from the activities of the day. I note that some larger properties on Low Street have off-street parking. However, there are also dwellings and premises in the area which appear to rely on on-street parking. As a result, I find that there would be a significant number of parked vehicles on Low Street in the evenings.
12. I acknowledge that such observations can only ever provide a snapshot of the circumstances relating to parking in the area. Notwithstanding this the proposed tapas and restaurant would introduce a use which would attract a high number of vehicles to the immediate area. As a result, I find that this would have a significant impact on the already high levels of on-street parking experienced on Low Street, particularly in the area adjacent to the appeal property. Furthermore, I find that it would introduce additional pressures and hazards with regard to highway safety and the free flow of traffic along Low Street, such as reduced visibility for all road users and pedestrians and difficulties in relation to the access to and egress from nearby properties in between parked vehicles.
13. The appellant argues that parking in the area is not a significant issue and that, in any event, patrons of the tapas and restaurant would be likely to use a range of transport modes, such as car sharing, a taxi and walking which would limit the overall impact on parking. I appreciate that such modes of transport may be used from time to time. However, there is no certainty that this would always be the case. Furthermore, I note that the appeal site is only able to accommodate about five cars on its forecourt. Therefore, I find it unlikely that it would accommodate all vehicles associated with the tapas and restaurant, the guests of the guest house and the appellant's own vehicles. As a result, there would inevitably be an overspill of parked vehicles onto Low Street.
14. From what I have seen and read, I find that whilst the proposal may result in patrons travelling to and from the appeal site using transport modes other than the private car, the related increase in vehicle activity in the area would have an adverse impact on highway safety and parking in the immediate area. In my view, this would result in significant harm which could not be reasonably or effectively overcome by planning condition or the variation of a planning condition.
15. Consequently, I conclude that varying the disputed condition would have a significantly adverse impact on highway safety and parking. It would therefore be contrary to Policies DS1 and T2 of the LP. Amongst other matters, these policies seeks to ensure that development has no significant detrimental effect on neighbouring land uses with regard to noise and provides satisfactory vehicular access from the public highway.

Other Matters

16. I note the appellant's points regarding the activity and behaviour of particular neighbours and also the lack of objection from other neighbours regarding the appeal proposal. However, whilst I have had due regard to such matters, they do not carry significant weight in the determination of this appeal. I acknowledge and appreciate the importance of the proposal to the appellant and his family in terms of future business expansion and also in terms of their enjoyment. However, such matters do not override my findings relating to the significant harms I have identified in the substantive matters above.

17. I note that a similar proposal was refused previously at the appeal property and I have given this due regard and weight. Furthermore, from what I have seen and read, I note that the circumstances relating to the previous proposal and this appeal scheme have altered little. Notwithstanding this, I confirm that I have assessed and determined this appeal scheme on its own merits and circumstances.
18. I have had regard to the appellant's suggestion of granting a temporary planning permission for a probationary of six months with a restriction of use for up to 10 non-resident guests. Based on the evidence before me, I find that such an approach would not be appropriate as it would be unlikely to overcome the significant harms I have identified. Furthermore, the original planning application did not seek a temporary planning permission. Having given due consideration to the appellant's points regarding this matter, I find that I must determine the appeal on the same basis as the Council did and as the proposal was originally submitted.

Conclusion

19. I appreciate that the proposal would have some economic benefits for the local area with regard to the development of an existing business. However, the significant harm I have identified relating to noise and disturbance and highway safety would outweigh the benefits in favour of the proposal.
20. Therefore, for the above reasons, and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

Andrew McCormack

INSPECTOR