



Appeal Decision

Site visit made on 7 August 2017

by David Cross BA (Hons), PGDip, MRTPI

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

Decision date: 1 September 2017

Appeal Ref: APP/W4515/W/17/3173772

Briar Dene, 71 The Links, Whitley Bay, Tyne & Wear NE26 1UE

- 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 David Horgan of Sir John Fitzgerald Ltd against the decision of North Tyneside Metropolitan Borough Council.
 - The application Ref 16/01390/FUL, dated 8 July 2016, was refused by notice dated 7 November 2016.
 - The application sought planning permission for proposed refurbishment and extensions to the existing public house, improving the existing lounge/kitchen and provision of an additional accessible WC and inclusion of a take-away fish bar to the rear. Addition of a veranda and canopy and 3no. accessible draft lobbies. Erection of small extension to the first floor to accommodate new enclosed escape stair and improvement to existing living accommodation. External alterations to include new windows, roof lanterns, new cladding/render, new landscaping and accessible parking without complying with a condition attached to planning permission Ref 15/02027/FUL, dated 15 February 2016.
 - The condition in dispute is No 14 which states that: *The external seating areas, including the area covered by a veranda, shall not be used by customers of the application site outside of the hours of 08:00 to 21:00 on any day.*
 - The reason given for the condition is: *In order to protect the residential amenity of surrounding occupants and occupants of the hotel in accordance with Policies LE2, E3 and H13 of the North Tyneside Unitary Development Plan 2002.*
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Decision

1. The appeal is dismissed.

Procedural Matter

2. Following the submission of the appeal the North Tyneside Local Plan 2017 (LP) has been adopted. As a result, Policies LE2, E3 and H13 of the North Tyneside Unitary Development Plan 2002 have been superseded. Both parties have been provided with an opportunity to comment on the adoption of the new LP and I have taken account of the comments raised in reaching my decision.

Background and Main Issue

3. Planning permission has been granted for the refurbishment and extension, as well as various other works, of the Briar Dene public house, which is a long established facility in the area. The development includes the provision of an improved and relocated external seating area for customers. Condition 14 of the planning permission restricts the use of the external seating area by

customers to between the hours of 08:00 to 21:00. I saw that the refurbished public house is now open and that a seating area is provided under a veranda on the south and west facing elevations of the building. The appellant wishes to extend the use of the external seating area beyond the hours specified in the condition, and has suggested an extension to 22:30.

4. The main issue is the effect that the proposed times of operation of the external seating area would have on the living conditions of nearby residents in respect of noise and disturbance.

Reasons

5. In support of the appeal, the appellants have submitted a Noise Impact Assessment (NIA) to identify and comment on the potential noise impacts arising from the use of the external seating area. The NIA assesses the existing environmental noise at the site and predicts the noise arising from the seating area based on a number of methodologies. At the time of the NIA the seating area was not in operation and the prediction methodologies are based on best practice from elsewhere.
6. The nearest noise sensitive properties are dwellings to the south west of the site on Grenada Close. The NIA states that adverse noise impacts on residential gardens and ground floor spaces at nearby residential dwellings are unlikely to occur. However, it also concludes that in first floor spaces on the closest dwellings, adverse effects could occur from the seating area when the windows of the dwellings are open, which would be on the threshold of the significant observed adverse effect level taking account of the more 'disturbing' nature of noise from the seating area.
7. I am mindful that the first floor spaces of dwellings referred to in the NIA are likely to be bedrooms. Residents of nearby dwellings (which may include children) are more likely to occupy bedrooms as the evening progresses and I consider that 21:00 represents a reasonable threshold in response to that change in the form of occupation. Therefore, whilst there may be no significant change in noise levels compared to the period prior to 21:00 as emphasised by the appellants, the nature of occupation of the affected rooms may change with a resultant effect on the amenity of residents.
8. I note that the appellants wish to offer customers the opportunity to eat outside and make use of the external seating area during periods of nice weather. However, it is during such conditions that nearby residents may wish to open bedroom windows for natural ventilation which may lead to noise from the seating area becoming particularly intrusive.
9. The appellants have referred to a previous external seating area which was located to the side of the building facing the nearest residential properties. They emphasise that this previous seating area was not subject to any planning controls in relation to operating hours and that the current development represents a comparative improvement in relation to potential noise impacts. However, the previous seating area was granted by a historic planning permission dating from 1985 and may therefore have been assessed against a different policy background. I am also mindful that the current seating area is more sheltered which may lead to a greater intensity and period of use compared to the previous operation of the site, with a resultant increase in noise impacts.

10. The appellants emphasise that there have been no previous complaints in relation to the external seating area and this has been confirmed by the Council's Environmental Health team. However, the current external seating area is materially different from the previous one and is likely to lead to a greater intensity of use due to its more sheltered position. The lack of complaints in relation to the previous seating area does not therefore weigh significantly in favour of the proposal. Notwithstanding the lack of previous complaints, I am also mindful of the objections submitted by nearby residents expressing concerns in relation to noise and disturbance.
11. Although the appellant's NIA concludes that there is no certainty that the extended operation of the seating area will result in significant adverse impacts, it goes on to state that this may only potentially be the case. However, on balance, I consider that there is sufficient probability that the noise levels from the extended operation of the seating area would have a significant adverse effect on residents of nearby dwellings. This harm would be of such a degree to lead to substantial harm to the living conditions of nearby residents.
12. I acknowledge that the extended operating hours of the external seating area would be of benefit to the operation of the business. However, this benefit would not outweigh the harm arising to the living conditions of nearby residents identified above.
13. I therefore conclude that the removal of condition 14 or its replacement with a condition allowing the occupation of the seating area until 22:30 would harm the living conditions of nearby residents as a result of noise and disturbance. As a result, condition no. 14 is reasonable and necessary, and the proposal would conflict with LP Policies S1.2 and S1.4 in respect of the impact on local amenity. The proposal would also conflict with Policy DM5.19 as it would not result in satisfactory mitigation measures to secure a satisfactory living environment. The proposal would also be contrary to the core planning principles of the National Planning Policy Framework in respect of securing a good standard of amenity for all future occupants of land and buildings.

Conclusions

14. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

David Cross

INSPECTOR