

Appeal Decision

Site visit made on 18 June 2019

by Martin Andrews MA(Planning) BSc(Econ) DipTP & DipTP(Dist) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 July 2019

Appeal Ref: APP/Y0435/W/19/3225534

Knight Racer, 16 Watling Street, Bletchley, Milton Keynes MK2 2BL

- 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 Albert Wong against the decision of Milton Keynes Council.
 - The application, Ref. 18/01941/FUL, dated 1 August 2018, was refused by notice dated 11 October 2018.
 - The development proposed is a change of use of car park area and erection of marquee to house a Shisha Smoking Bar (Use Class A3) for a temporary period of 2 years.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are (i) the effect on employment land, and (ii) the suitability of the site for the use of land as a Shisha Smoking Bar as regards the effect on the character and appearance of the area, public safety, noise pollution for nearby residents, and highway safety / parking adequacy.

Preliminary Matters

3. As the marquee has already been erected, the appeal application is for retrospective permission, and I have noted the revised description. In addition, since the application was refused, the previous development plan has been replaced by Plan:MK 2016-2031 ('Plan:MK'), adopted in March of this year.

Reasons

4. On the first issue, the Council considers that there would be a conflict with the existing employment use of the site leading to an unacceptable loss of employment in conflict with Policy ER2 of Plan:MK. In the longer term the somewhat 'ad hoc' use of part of the car parking / storage of the nearby established B2 units for a Shisha Smoking Bar would in my view be likely to conflict with their full and effective use and viability. In this regard I note that the red line of the application is fairly tightly drawn around the two accesses to the site and the marquee and I consider there is the potential for an overspill of parking at busy times for the bar, with the 6 spaces provided proving inadequate, especially given that three members of staff are also employed.
 5. However, the application is for a temporary period of two years and has an evening use when the need for parking to service the B2 use is much less.
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In addition, there is an employment gain of three, albeit part time at this site. On this issue, whilst I consider that a permanent consent would be prejudicial to the objectives of Policy ER2, I do not regard the loss of employment land to be a basis for refusal of this application for a temporary permission.

6. Turning to the suitability of the change of use as regards a number of different aspects, the character and appearance of the immediate area is industrial with residential development on the periphery, some 30-35m away. I consider that a marquee, a structure normally associated with a short term occasion or event, would be an incongruous addition to the locality for a period as long as two years – in fact it would be over three years if the appeal is allowed because of the retrospective nature of the application.
7. The marquee and its leisure use are clearly out of keeping with their context and in my view comprise a development of an inappropriate standard for the public realm that also includes areas with views from nearby dwellings. On this basis it would be contrary to Policies D1, D2 & D3 of Plan:MK (relating to design and character and appearance), whilst there is inadequate justification provided under Policy D9, with its requirement to demonstrate an essential short term need for a temporary building.
8. On the issue of public safety, I consider that the Council is correct to refer to the absence of natural surveillance given that this is an evening use in an industrial area. And with the lack of lighting, pedestrians walking to and from the marquee in hours of darkness could be at increased risk from crime, whilst because of the narrow width and shared use of some parts of the accesses, also in harm's way from accidental collisions with vehicles. Even allowing for its temporary nature, I agree with the Council that the continued use of the marquee this would result in a relatively unsafe and inaccessible environment in harmful conflict with the objectives of Policies D1, CT2 and CT3 of Plan:MK.
9. Turning to noise pollution, the appellant argues that the Shisha Bar is a place for quiet enjoyment and relaxation, and because alcohol is not served the customers are likely to be well behaved and considerate. In addition, the nearest residences are as far as 35m away. However, the Council's statement refers to objections from neighbours regarding excessive noise, whilst an objection was also received by the Council's Environmental Health Department. In the light of this; the proposed opening hours of 1800- 2300 hours including Sundays, and the relative proximity of residential premises, I conclude on this issue that there would be harm to residents' living conditions by reason of noise and disturbance in conflict with the objectives of Policy D5 of Plan:MK and paragraph 127f) of the NPPF 2019.
10. On the final issue of highway safety and parking adequacy I have already accepted that for a temporary use the car parking is adequate, but on highway safety have observed the potential dangers for pedestrians at night-time.
11. Overall, and taking into account all other matters raised for the appellant, I conclude that the appeal should be dismissed.

Martin Andrews

INSPECTOR