



Appeal Decision

Site visit made on 4 September 2019

by Graeme Robbie BA(Hons) BPI MRTPI

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

Decision date: 24th September 2019

Appeal Ref: APP/P4415/W/19/3230361

10c Dale Road, Rawmarsh, Rotherham South Yorkshire S62 5AB

- 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 Hooman Raki against the decision of Rotherham Metropolitan Borough Council.
 - The application Ref RB2018/1774, dated 6 November 2018, was refused by notice dated 17 May 2019.
 - The development proposed is change of use to micro pub (Use Class A4) and erection of smoking shelter.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. I have adopted the slightly more concise development description given to the application by the Council on the decision notice and subsequent appeal documentation.
3. The building in question is currently in use as a public house which the proposal seeks to retain. The application was revised during the course of the Council's consideration of the application to include a revised enclosed outdoor smoking shelter and entrance lobby. It is clear to me that that is the basis upon which the Council determined the application, and so too therefore have I.
4. At the time of my visit to the site I saw that there were two raised patio areas outside the premises, albeit that one of these was removed from the application proposal. For the avoidance of doubt however, I have determined the appeal on the basis of the plans and proposals considered by the Council, as set out on the submitted plans.
5. The appellant's appeal statement refers to an Enforcement Notice issued by the Council in respect of the use of the appeal property. I understand that that Notice is also subject to appeal. For the avoidance of doubt however, I have confirmed my consideration of the matter to the appeal made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission for the use set out above.

Application for costs

6. An application for costs was made by Mr Hooman Raki against Rotherham Metropolitan Borough Council. This application is the subject of a separate Decision.

Main Issue

7. The main issue is the effect of the development on the living conditions of occupiers of the surrounding properties, with particular regard to noise and disturbance.

Reasons

8. The appeal property is a small, single storey building located at the rear of a small yard area enclosed on one side by the substantial and continuous flank wall of 2 and 2a-2f Dale Road. On the other side, a substantial brick wall separates the yard from the adjacent car park and beer garden associated with the Horse and Jockey public house.
9. The yard itself is accessed between the gable elevation of 8 Dale Road and the flank elevation of Nos 2 and 2a-2f. The access opens out slightly beyond the gable elevation of No. 8 into a small area for car parking immediately to the rear of Nos. 8 and 10. To the rear of No. 10c, on higher ground, lies a turning head and car park serving properties on Hawley Street.
10. There is a strong commercial presence in ground floor units around the appeal site, with the Horse and Jockey public house, Nos. 8 and 10 Dale Road, and the ground floor office of letting agents in the Nos 2a – 2f block all close to the appeal property. However, the appeal building's southern elevation, and much of the yard area's southern boundary, is bounded by residential properties and this broad mix is typical of the area around the junctions of Dale Road, Stocks Lane, New Street and Green Lane. That the appeal site falls within a 'Mixed Use Area MU03'¹ as defined by the Rotherham Local Plan (RLP) supports my observations in this respect.
11. RLP policy SP65 and its supporting text, which includes 'Table 18 – Acceptable Uses Within Mixed Use Areas', identifies a range of acceptable uses within each of the defined mixed use areas. Acceptable uses will be permitted in these areas provided that proposals meet the requirements of other planning policies as appropriate. It goes on to state that other uses not identified in the table will be considered on their merits.
12. However, the use of the appeal building as a micro pub does not fall within one of the identified acceptable uses within mixed use area MU03². Whilst there is no dispute between the main parties that there are no sequentially preferable locations for a micro pub, and I have not been presented with any compelling evidence that would lead me to a different conclusion in this respect, the development must nonetheless be considered on its merits and the requirements of other planning policies as appropriate. To this end, the Council refer to RLP policy SP52 in their reason for refusal which sets out the approach to development proposals likely to cause pollution. It states that development proposals will only be permitted where, amongst other factors, it can be demonstrated that mitigation measures will minimise potential impacts to, amongst other things, the amenity of the local area. Particular consideration will be given to potential noise likely to be generated by a development and the nature of nearby uses. Housing is noted as a use that is particularly sensitive to noise.

¹ As defined on the Rotherham Local Plan Policies Map

² Table 18 – RLP policy SP65 and supporting text

13. The appeal building is reasonably small and, internally, has one main space to accommodate patrons. As such, it is unlikely that it would attract, or be capable of accommodating, significant numbers of patrons. However, it lies cheek-by-jowl with existing residential properties, and not just those accommodated within the building to the south of the site and yard area, but also those in the upper floors above Nos. 8 and 10.
14. The implications of people congregated outside the building, or of noise transmission from the appeal building to the adjacent residential properties should not therefore be underestimated. I note that the appellant revised the scheme during the course of the Council's determination of the application to delete one of the raised patio areas and to add an enclosed entrance lobby and a largely enclosed outdoor smoking shelter. As such, I have considered the appeal on the basis of those proposals, not the layout of the outside areas as I saw them during my visit to the site.
15. Thus, I accept that the smoking area would be partly enclosed by a timber fence with a canopy roof over. The glazed lobby structure would also be a physical impediment between the smoking area and the adjacent building's flank elevation. Internally, sound insulation is proposed for the southern internal wall. These elements may have some beneficial effects in terms of mitigating the effect of noise from within and outwith the building arising from its continued use as a micro pub.
16. However, I cannot be certain that they would sufficiently address these issues as there would remain elements of the smoking shelter open and those open elements would not mitigate transmission of noise from patrons within it. Nor is it clear how these measures would address noise and disturbance arising from patrons milling about outside the building, or on their way to or from it. In the close context of existing residential properties, either those that have windows facing directly towards the appeal building such as upper floors at Nos. 8 and 10, or those that adjoin at Nos. 2a – 2f, such matters would rightly remain an area of concern to occupiers of those properties.
17. I accept that the flank elevation of the building that houses Nos. 2 and 2a – 2f is blank, but I saw that there are a number of rooflights within the roof elevation facing towards the yard area and the micro pub. As there are no rear facing windows within those units, I do not consider it unreasonable for occupiers of those properties to make use of those roof windows when they see fit. I accept that there appears to be broad agreement that the previous use of the yard and building was for a car repair business and that such a use may have been capable of giving rise to noise disturbance. However, such incidences would, in my experience, be more likely to arise during typical 'working hours' rather than into the evening when residents might otherwise and reasonably expect a degree of peace and quiet.
18. I am mindful of the example drawn to my attention of a micro pub in another Borough that was recently considered at appeal³. I do not however have the full details of that proposal before me or the development plan context in which it was considered and so I cannot be certain that that proposal is directly comparable to the current appeal scheme. What is clear from the Inspector's decision in that instance is that a Noise Assessment and Noise Management Plan were submitted in support of that proposal and were referred to by the

³ APP/D2320/W/19/3219832

Inspector. I have no evidence before me to suggest that the appeal scheme in the current instance is, or was, supported by such information.

19. I have carefully considered the conditions suggested by the Council, and the steps taken during the course of the application by the appellant to reduce the potential for impact from noise to arise, or to mitigate it should it do so. Although the appellant considers that the Council's Planning Regulatory Board placed undue weight and significance on the anecdotal views of objectors and neighbours, the micro pub is already operational and the effects thereof have been felt by those residents. I have no reason to doubt the veracity of the concerns expressed or the disturbance or distress that the use has given rise to.
20. I have no substantive or compelling evidence to support the degree to which the appellant's revisions would address these concerns and, as such, cannot conclude that the continued use of the appeal building would not have a detrimental impact upon the residential amenity of occupiers of nearby residential properties. Nor am I persuaded that the use of planning conditions would be capable of sufficiently mitigating the impacts of the use. It has not therefore been adequately demonstrated that the use of the building as a micro pub and the measures proposed to mitigate the potential impact of noise arising from its use on occupiers of adjacent residential properties would sufficiently minimise those impacts. The use of the appeal building as a micro pub is therefore in conflict with RLP policies SP52 and SP65.

Conclusion

21. For the reasons set out, and having considered all other matters raised, I conclude that this appeal should be dismissed.

Graeme Robbie

INSPECTOR