



Appeal Decision

Site visit made on 14 October 2019

by A Parkin BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 November 2019

Appeal Ref: APP/J4423/W/19/3234519

Bar and Beyond, 173 West Street, Sheffield S1 4EW

- 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 Deltic Group against the decision of Sheffield City Council.
 - The application Ref 18/01647/FUL, dated 27 April 2018, was refused by notice dated 5 June 2019.
 - The development proposed is the construction of raised external seating area to rear of existing public house.
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Decision

1. The appeal is allowed and planning permission is granted for the construction of raised external seating area to rear of existing public house at Bar and Beyond, 173 West Street, Sheffield S1 4EW in accordance with the terms of the application, Ref 18/01647/FUL, dated 27 April 2018, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans and documents:
1872_P01 Rev A - Site Location Plan; 1872_02 Rev K - Proposed Floor Plans; 1872_P03 Rev E - Proposed Elevations / Sections; Outside Area Management Plan received by the Council 17.05.19.
 - 3) No development shall commence until samples of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved samples.
 - 4) The external areas hereby approved shall only be open for customers between the following hours:
10.00 – 03.00 on any day.
 - 5) Amplified or other music may only be played in the external areas of the premises between the following hours:
10.00 – 22.00 on any day.
 - 6) The external areas hereby approved shall not be used until the associated building works, including the boundary walls, are completed.

Preliminary Matters

2. There is some ambiguity concerning the hours of opening of the premises, including with regard to the hours referred to on the Premises Licence SY002426 PR. I have used the opening hours listed on the planning application form in determining this appeal.

Main Issue

3. The main issue is the effect of the proposal on the living conditions of nearby occupiers, with particular regard to noise disturbance.

Reasons

4. The appeal site is located between West Street and Devonshire Street within Sheffield's Central Shopping Area. The appeal premises faces onto West Street, which is a busy street used by trams, buses and other vehicles and contains a mix of uses in this vicinity, including shops, takeaways, restaurants and public houses.
5. The appeal premises is a Class A4 – Drinking Establishment with public areas at ground and first floor level. To the rear of the appeal premises there is an outdoor smoking area, enclosed by a brick wall with two separate access doors, and the service yard for the business. Both the service yard and the smoking area are set back from Devonshire Street behind an area of hardstanding.
6. Devonshire Street is at a lower elevation than West Street, meaning that the ground floor smoking area is actually raised above Devonshire Street by some 2.3 metres. The street has a high pedestrian footfall and links West Street to the City Centre. It contains a mix of uses in generally traditional buildings on its northern side, with a surface car park opposite the appeal site, on the southern side by the junction with Fitzwilliam Street.
7. There are a significant number of residential apartments to the west and south of the appeal site along Fitzwilliam Street, many of which are part of the *West One* development, which also contains various licensed premises and restaurants, including some with outdoor seating areas.
8. The appeal development would extend the existing outdoor smoking area into part of the service yard, which would be reduced in size but retained. This *upper ground floor terrace* at the rear would include seating and a bar area and would be at the same elevation as the existing outdoor smoking area. Part of the existing southern boundary wall would be reduced in height to some 1.1 metres.
9. An additional outdoor terrace area containing seating would be constructed on much of the hardstanding by Devonshire Street, linked to the proposed upper ground floor terrace by steps. Referred to as the *lower ground floor terrace* on the submitted drawings, this would be positioned some 0.9 metres above Devonshire Street and largely enclosed by brick walls, with a new stepped access leading down to the street. Whilst there would be gates to this new street access, they would be fixed open during trading hours.
10. The application form states that the proposed hours of opening would be between 10.00 and 03.00 each day; the appellant has also confirmed that amplified and other music would be played externally until 22.00.

11. To support their proposal, the appellant produced a noise assessment report¹, which has been updated so as to reflect revisions to the proposal since its initial submission and in light of comments made by the Council's Environmental Health service. The report uses 3-dimensional noise modelling based on monitoring data recorded during a weekend in April 2018, at and surrounding the application site. Sensitive receptors (various dwellings) are identified at different distances and heights from the appeal site.
12. I note that the Council's Environmental Health service considers the revised report to be generally acceptable, notwithstanding some uncertainties, given that there is 'no formally adopted British Standard to assess noise associated with outdoor seating areas'.
13. The proposed development would significantly increase the size of the existing outdoor area and would change and intensify its use, including with the provision of a bar and seating and with the playing of amplified music until 22.00. However, even with the introduction of gated access from Devonshire Street, the submitted Noise Assessment shows that the impact of the proposal is unlikely to significantly affect nearby sensitive receptors, including those within the *Devonshire Quarter Quieter Zone*. The report concludes that the proposal is not expected to have an adverse impact on health or quality of life.
14. The appellant has also provided a copy of the *Management Plan for Operating the Outside Area* at Appendix C of their statement of case. Amongst other things this contains measures for monitoring and managing noise from the premises, including the egress to Devonshire Street. There is no compelling evidence to show that this plan would be likely to lead to unacceptable levels of noise disturbance.
15. I note the comments of the Council's Environmental Health service in relation to the proposal and with regard to a previous (lapsed) planning permission² for an external seating area at the appeal site; a mixed use development that has been granted planning permission on the other side of West Hill Lane; and that the appeal proposal *goes considerably beyond what is permitted for comparator premises* in the area.
16. However, these comments do not demonstrate that the proposed development would cause any harm. Notwithstanding the nearby residential developments, no substantive evidence has been provided that the proposed development would cause an unacceptable noise disturbance in this busy part of the Central Shopping Area.
17. For these reasons, the proposed development would not adversely affect the living conditions of nearby occupiers with particular regard to noise disturbance. Consequently, the proposal would accord with Policy S10 (development in shopping areas) of the Sheffield Unitary Development Plan 1998 and paragraph 180 of the National Planning Policy Framework 2019, in this regard.

Conditions and Conclusion

18. Both parties have provided lists of suggested conditions to be attached to the grant of planning permission should the appeal be allowed, which I have

¹ Proposed External Seating Area at 'Bar and Beyond', Sheffield - Noise Assessment August 2018 (WYG)

² LPA Ref. 14/03578/FUL

considered in light of Government guidance and the specifics of the appeal proposal.

19. In addition to the standard commencement condition, a condition specifying the approved plans / documents would be necessary for reasons of certainty and to protect the living conditions of nearby occupiers. To protect the character and appearance of the area a pre-commencement condition requiring the approval of external material samples would be manifestly necessary.
20. Conditions specifying the hours when the external areas hereby approved would be open to customers, the hours when amplified or other music may be played there and that these external areas should not be used until the associated building works are completed, would be necessary for reasons of certainty and to protect the living conditions of nearby occupiers.
21. Some of the Council's suggested conditions would significantly change the appeal proposal, including in terms of prohibiting the playing of amplified music in the external areas, restricting the use of the proposed Devonshire Street access/egress and restricting the hours of operation. Planning Practice Guidance advises that conditions which substantially change a proposal from that contained in the application are not appropriate³.
22. For the reasons given above, and taking into account all matters raised, I conclude that the appeal is allowed.

Andrew Parkin

INSPECTOR

³ Paragraph: 012 Reference ID: 21a-012-20140306 Revision date: 06 03 2014