



Appeal Decision

Site visit made on 16 December 2019

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 15 January 2020

Appeal Ref: APP/N4720/C/19/3234874

The Headingley Taps, North Lane, Headingley, Leeds LS6 3HG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mitchells and Butlers Retail Limited against an enforcement notice issued by Leeds City Council.
 - The enforcement notice was issued on 12 July 2019.
 - The breach of planning control as alleged in the notice is *Without planning permission the extension of the external seating area to the front of the public house.*
 - The requirements of the notice are:
 - (1) *Cease the use of the unauthorised extended part of the external seating area.*
 - (2) *Remove any means of enclosure, furniture, equipment, fixtures, fittings and materials associated with the extended section of seating area from the land.*
 - (3) *Make good any parts of the building and land to which the unauthorised development was attached.*
 - The period for compliance with the requirements is 28 days.
 - The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.
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Summary Decision

1. The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Preliminary Matters

2. The notice does not expressly state whether the alleged development has amounted to operational development or a material change of use. The parties disagree about whether operational development has taken place, albeit that the appellant considers that the matters alleged have amounted to the breach of an existing planning condition limiting the trading area of the public house.
3. The public house stands surrounded to the front and sides by a car park. This is run as a public car park, with a car park Management Strategy having been required by an earlier planning permission, providing for the car park to be used by both customers and the general public. At my site visit I saw that the car park was well-used, with the vast majority of users parking their cars and leaving the site, or alternatively returning to their cars from outside the site. It therefore appeared to me that, notwithstanding the public house and car park being in the same ownership, and the car park's use to some extent by patrons of the public house, they are physically separate (save for the access to the public house from across the car park) and have substantially different and unrelated functions, thus forming separate planning units.

4. The works that have been carried out amount to the laying of astroturf, the placing and affixing of tables, benches and other seats, and the installation of planting boxes and some low lighting. I consider that development without planning permission has occurred, consisting of the change of use of part of the car park (amounting to 9 spaces) to the public house use, with the installation of several tables, benches and other seating to facilitate that use. It is unnecessary to conclude on whether the works amount to operational development, as all these works are anyway integral to the change of use. The allegation set out in the notice has occurred as a matter of fact, and constitutes development requiring planning permission.

Main Issues

5. The main issues in the appeal relate to the impact of the development on the existing living conditions of nearby residents, and to its impact on noise, disturbance, anti-social behaviour and crime in the local area, including cumulative impacts.

Reasons

6. The Headingley Taps, a large north-facing public house, is a converted Grade II pumping station in the Conservation Area and in the town centre of Headingley. Planning permission was granted in 2014 to make certain reconfigurations including the provision of an outdoor seating area to the west side of the front entrance to provide around 50 covers. Conditions included No 3, which provided that the outdoor seating area should only be operated in accordance with an approved Management Plan dated 7th July 2014. For the avoidance of doubt, the seating area was to be cleared and cordoned off and not available for use any later than 9.30pm each evening. A further condition, No 4, provided that the car parking should only be operated in accordance with the approved Car Parking Management Plan dated 7th July 2014. Neither of those management plans has been provided to me, but the appellant has proposed revised versions for my consideration in this appeal. The effect of the development that has been carried out is to increase the external seating capacity to approximately 100 covers by extending the outdoor seating area to the east side of the front entrance.
7. The delegated report on the 2014 application noted that the application site and the seating area were located away from surrounding residential properties, and found that any noise and nuisance arising from the use of the seating area would not result in significant harm to amenity. The public house stands beyond a sizeable car parking area away from the main road. Other drinking establishments lie in the vicinity, including 'Manhatta' and the 'Head of Steam'. The public house is an acknowledged stop on the 'Otley Run' pub crawl of around 18 establishments in the area, although described in advertising literature as a 'diversion'. The site lies away from the main drag of the A660 Otley Road/Headingley Lane.
8. Save for the adoption (in November 2014) and recent Selective Review (in September 2014) of the Core Strategy, the policy position has not changed since the Council's 2014 deliberations. Policy P10 relates to the design of new buildings and spaces. I consider it applicable notwithstanding that I have found the development to amount to a material change of use, given its application to spaces as well as to buildings. Developments are required to make a positive contribution to place-making, including by protecting residential and general

amenity, and creating safe and secure environments. Policy GP5 of the Unitary Development Plan (Review 2006) requires that development proposals should resolve detailed planning considerations and avoid problems such as environmental intrusion or loss of amenity, and promote the prevention of crime. The policy goes on to say that development proposals should have regard to the guidance contained in any framework or planning brief prepared for the site or area.

9. The appellants have produced a noise assessment with the results of a survey taken in the evening of Saturday 29 June 2019. This found that the nearest residential receptors to the public house (save for those on Bennett Street, which are screened from noise by the public house itself) were primarily affected by road traffic noise and the noise from the patrons of other establishments nearby. The noise levels attributed to the Headingley Taps' outdoor seating area at the chosen receptors, close to the residential flats opposite the public house on North Lane, were rather lower than the ambient noise levels. The assessment finds that the extended outdoor seating area does not result in any significant noise impact on the dwellings in the area.
10. Although the noise survey was undoubtedly a snapshot in time, from the evidence before me and my observations on site I have no good reason to doubt its conclusion that the noise impacts from the seating area, or more specifically from the extended part of it, are not a significant contributor to the overall noise levels in the area. Although taken outside of university term time, the survey was taken on a summer's evening at the weekend with temperatures above 20° and the seating area is reported as having been occupied at near capacity during the period of the survey before being cleared at around 11pm. The use of the seating area *per se* does not provide grounds for dismissing the appeal, and I identify no policy conflict.
11. The Council's additional and underlying concern however appears to be that, by increasing the capacity of the public house, more patrons will be attracted to it and, as a result, the area's problems of crime, anti-social behaviour and off-site noise and disturbance would increase. I accept in general terms that a proliferation of drinking establishments may result in such problems. From my observations on site, however, I do not consider that the increased capacity arising from the provision of the extra seating results in any material difference to the existing noise or disturbance levels in the area, whether emanating from the patrons of the seating area itself or from the area more generally, as patrons move around between establishments and at closing time.
12. The existing planning permission allows the use of the (former) outdoor seating area until 21.30, following which the area is to be cleared and cordoned off. Whilst noting the Council's recognition that operational management plans may be limited in their efficacy, a condition limiting the hours during which the seating may be used – with the consequential limitation on the available capacity of the public house – is not unenforceable.
13. The appellant's proposed seating management plan would allow the use of the seating area to coincide with the hours permitted by the premises licence; that is, until 23.30. I am mindful that the statutory licensing objectives, whilst including the prevention of crime & disorder and public nuisance, and the achievement of public safety, do not extend to the full gamut of planning considerations including the effects on neighbouring living conditions.

14. However, in the light of the noise survey demonstrating that the appeal premises are not a significant contributory factor to the noise levels in the area, and in the absence of any evidence that the outdoor seating area is a cause of any other detriment to the local area or to the living conditions of nearby residents, I see no reason to depart from the seating management plan as proposed. The policy requirement of P10 is to make a positive contribution to place-making, and to protect residential and general amenity. On the evidence before me, I am unable to discern any conflict with these requirements.

Other matters

15. The appeal site lies within the Headingley Conservation Area and the public house itself, originally a water pumping station, is a listed building. The effect of the development on the significance of these heritage assets does not form a reason for the Council having issued the notice. Nonetheless in accordance with my duties under sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 I have had regard to the desirability of preserving and enhancing these heritage assets, including their settings. I consider however that no adverse impacts on the significance of the heritage assets have resulted from the development.

Conclusion

16. On the basis of the evidence before me I consider that the development's impacts on the living conditions of nearby residents, and its impacts (including cumulative impacts) on noise, disturbance, anti-social behaviour and crime in the local area, would not have a material effect on existing conditions. The development is thus consistent with the development plan for the area, subject to the imposition of conditions. I approve, and require by condition, the appellant's proposed seating management plan. The appellant's car parking management plan, which supersedes that of 2014 owing to the reduction in the car parking area caused by the development, is also required. No other conditions are necessary. Subject to those conditions, I consider that the appeal should succeed and that planning permission should be granted for the extended seating area.

Formal Decision

17. The appeal is allowed, the enforcement notice is quashed, and planning permission is granted on the application deemed to have been made under section 177(5) of the Act as amended for the development already carried out, namely the extension of the external seating area to the front of the public house at the Headingley Taps, North Lane, Headingley, Leeds LS6 3HG, subject to the following conditions:
- (1) The outdoor seating area shall not be operated except in accordance with the Management Plan hereby approved (undated, but Appendix 10 to the appellant's statement) incorporating drawing JMDA 1440/124D.
 - (2) The car parking shall be operated in accordance with the revised Car Parking Management Plan of January 2019 incorporating drawing JMDA 1440/124B.

Laura Renaudon

INSPECTOR