
Appeal Decision

Site visit made on 10 June 2020

by Jillian Rann BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 June 2020

Appeal Ref: APP/W3005/W/20/3245014

17 Washdyke Lane, Hucknall, Nottingham, Nottinghamshire NG15 6NH

- 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 Jozef Kaszycki against the decision of Ashfield District Council.
 - The application Ref V/2019/0658, dated 14 October 2019, was refused by notice dated 2 December 2019.
 - The development proposed is described as: 'to turn the property into a micro pub. This requires a change of use to A4'.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The appeal relates to a ground floor commercial unit which was vacant at the time of my visit. The Council and the appellant both describe its existing use as retail (A1), and the Council refers to its use for commercial purposes having previously been established by its use as a shop. I have considered the appeal accordingly with regard to the existing use of the premises.

Main Issues

3. The main issues are the effects of the proposed development on:
 - the living conditions of the occupants of nearby residential properties with regard to noise and disturbance; and
 - the safety and convenience of highway users in the vicinity of the site.

Reasons

Living conditions

4. The appeal relates to a commercial unit on the ground floor of a three storey, end-terraced property at the junction of Washdyke Lane and Belvoir Street. There is a residential flat within the building, above the appeal premises. The appeal property and most of the terraced houses immediately around it, including those adjoining it on Washdyke Lane, have their front doors and windows adjacent to the back edge of the footway.

5. Although there are some commercial units on Annesley Road nearby, Washdyke Lane is a residential street, and the site is located some way along it, opposite a park, and with terraced housing on Belvoir Street to the rear and extending for some distance along Washdyke Lane to either side. Given the residential nature of Washdyke Lane and the site's immediate surroundings, I consider that the levels of vehicle and pedestrian activity and background noise in the vicinity of the site are likely to be quite low, particularly on an evening.
6. The micropub would be open between 1600-2220 hours Tuesday to Thursday inclusive, 1600-2250 hours on Fridays and 1200-2250 hours on Saturdays and Sundays. A licence has been granted allowing the sale of alcohol for consumption off the appeal premises during similar periods, and I have not been advised that there are any planning restrictions on the opening hours of the existing A1 use. Therefore, the evidence indicates that the appeal property could give rise to the comings and goings of customers to and from the site at similar times to the micropub within the scope of its existing retail use.
7. However, even if the numbers of customers visiting the micropub were similar to those associated with a retail unit, customers of a drinking establishment would generally be present on the site for longer than those visiting an A1 retail unit. Therefore, although no external seating is proposed, I consider that the proposed use would be more likely to result in groups of people gathering within the unit, and for longer periods, and in people periodically congregating outside the premises to smoke for example, than an A1 retail use.
8. Although the premises are relatively small, the submissions indicate that they could accommodate seating for up to 20 people. Whilst no live or amplified music, televisions or fruit machines are proposed, the sound of that many customers talking within the property could nonetheless create a greater level of disturbance to the occupiers of the adjoining terraced house at 19 Washdyke Lane and those of the flat above the premises, and for more extended periods, than would be likely to arise from the briefer customer visits associated with a retail unit. In the absence of substantive details as to how or whether internal noise from the premises might be satisfactorily mitigated to avoid such disturbance to those adjoining properties, I cannot be certain that the living conditions of their occupants would be adequately protected.
9. Nonetheless, even if such measures could be implemented, sound from customers within the unit could spill out of the building if its doors and windows were open, during warm weather for example. Furthermore, even without outdoor seating, the proposed use would be likely to result in groups of customers standing on the footways outside the premises to smoke.
10. The site and those adjacent footways are very close to the windows of the flat above the premises, those of the adjoining property at No 19, and those at No 15 which face the site and are separated from it only by the relatively narrow Belvoir Street. The sound of customers talking on the adjacent footway, or within the building if the doors or windows were open, is therefore likely to be audible from adjacent residential properties, particularly if they also had their windows open. I have not been presented with any suggestion as to how or whether such eventualities could be controlled or prevented via planning condition. There is therefore a significant likelihood that the occupants of those neighbouring residential properties could experience noise and disturbance for extended periods when the A4 unit was open, including into the evening.

11. I recognise the appellant's intention that the micropub would be aimed at a relatively mature customer demographic and would focus on serving real ales and other premium drinks, and the various measures proposed to encourage customers to enter and leave the premises quietly and to minimise the likelihood of crime or antisocial behaviour. I also note that the Council's environmental health officer did not object to the proposal. Nonetheless, for the reasons given I consider that sound and activity associated with the proposed use would be audible from neighbouring residences at certain times and potentially for extended periods, including on an evening. Given the proximity of neighbouring windows and the likely low background noise levels in this residential area, I consider that such sound and activity would affect neighbours' quiet enjoyment of their properties to an unacceptable degree. In any event, I must consider the potential effects of the proposed use over its lifetime and, notwithstanding the appellant's intentions, I cannot be certain that future occupiers would operate in a similar manner.
12. Therefore, for the reasons given I conclude that the proposed development would have an adverse effect on the living conditions of the occupants of nearby residential properties with regard to noise and disturbance. The proposal would therefore conflict with saved Policy ST1 (b) of the Ashfield Local Plan Review which, amongst other things, states that development will be permitted where it will not adversely affect the amenity of the environment, and with the Framework, which states that developments should create places with a high standard of amenity for existing and future users.

Safety and convenience of pedestrians and other highway users

13. As the appeal site has no off-street parking, customers arriving by car would be required to park on the street nearby. I have been referred to existing parking difficulties in the vicinity, and observed that many of the terraced houses closest to the site on Belvoir Street and Washdyke Lane have no off-street parking. However, I observed that many of the houses in the wider vicinity have some off-street parking, and that on-street parking is possible on both sides of Washdyke Lane, including outside the terraced houses immediately to either side of the site, and along the frontage of the park opposite.
14. The micropub would be likely to be busiest on evenings and weekends, when nearby residents are more likely to be at home and parked nearby. It would not be possible to prevent customers from arriving by car. However, given its limited size and its location in a relatively large residential area, I consider it reasonably likely that the catchment area of the proposed micropub would be predominantly local in nature and that a proportion of its customers would walk to the site. Furthermore, as an existing retail unit, the site could generate vehicle trips and on-street parking demand nearby at present, including at similar times to those when the micropub would be open.
15. Micropub customers would be likely to remain on the premises for longer than those visiting an A1 retail unit. However, I have not been presented with compelling evidence to indicate that the number of customers visiting by car, or the resultant level of parking demand, would be significantly greater as a result of the micropub compared with that existing retail use. Therefore, and having regard to the very limited size of the appeal premises, I consider that the proposed use would not result in a significant increase in on-street parking, in the displacement of parking significantly further afield from the site, or in

- nearby residents having to travel significantly greater distances from their homes to access on-street parking, compared with the existing situation.
16. There are existing parking restrictions in place around the junction alongside the site, and on Washdyke Lane opposite. Whilst concerns have been raised that the proposed use would lead to an increased likelihood of indiscriminate parking taking place close to the site, I have no reason to believe that future customers would park other than in a safe and reasonable manner.
 17. Vehicles parked on Washdyke Lane may affect visibility to the left for drivers emerging from Belvoir Street onto Washdyke Lane at present. However, I have not been presented with compelling evidence to indicate that existing situation has given rise to significant highway safety issues, or that the proposed use would result in a significant increase in vehicle movements or parking demand compared with the existing retail use. Consequently, I am not led to conclude that the development would give rise to a significant increase in hazardous vehicle movements or parking practices.
 18. The parking restrictions around the adjacent junction would prevent delivery vehicles from parking immediately outside the site. However, based on the evidence before me and the limited size of the appeal premises I consider that the frequency and duration of deliveries and the size of vehicles used would also be limited, and could be accommodated within existing areas of on-street parking nearby. I have not been presented with substantive evidence to indicate that the frequency or duration of deliveries associated with the micropub would be significantly greater than those which could take place in association with a retail unit which could occupy the premises at present. I therefore conclude that deliveries associated with the micropub would not give rise to significant disruption or obstruction to surrounding highways, or additional highway safety implications, compared with the existing use.
 19. Therefore, for the reasons given, I conclude that the proposed development would not have an adverse effect on the safety or convenience of highway users in the vicinity of the site. The proposal would therefore not conflict with saved Policy ST1 (c) of the Ashfield Local Plan Review which, amongst other things, states that development will be permitted where it will not adversely affect highway safety. That policy is consistent with the Framework, which states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety.

Other Matters

20. I have considered the appeal on its planning merits and in the light of further information provided by the appellant at the appeal stage, and matters raised by the appellant relating to the Council's processing of the application do not alter my conclusions above.

Conclusion

21. Although I conclude that the development would not have adverse implications for highway safety, that finding does not outweigh the harm to the living conditions of neighbouring residents that I have identified. Therefore, for the reasons given, the appeal is dismissed.

Jillian Rann
INSPECTOR