



Appeal Decision

Site visit made on 9 December 2020

by Mrs H Nicholls FdA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 December 2020

Appeal Ref: APP/W1145/W/20/3256456

Village Square, Golf Links Road, Westward Ho!, Bideford, Devon EX39 1EW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Westward Living Ltd against the decision of Torridge District Council.
 - The application Ref 1/0024/2020/FUL, dated 12 January 2020, was approved on 14 April 2020 and planning permission was granted subject to conditions.
 - The development permitted is temporary change of use from open space to drinking, food and entertainment establishment (A4 Use Class) and operational development for the period of 5 years.
 - The condition in dispute is No 5 which states that: Live, recorded or amplified music (including open mic events) shall not be used at the site.
 - The reason given for the condition is: In the interest of protecting residential amenity in accordance with North Devon and Torridge Local Plan Policy DM01.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the disputed condition is necessary and reasonable having regard to the living conditions of neighbouring occupiers and potential noise effects.

Reasons

3. The appeal site is an open space adjacent to a public village green that separates the Westward Ho! waterfront from its built-up area. Though there are other mixed commercial uses in the area, the site is also surrounded by buildings in residential uses, including the adjacent three storey apartment block. The site's importance to the area's tourist economy is evident from a planning permission granted for the construction of a hotel.
4. The permission to change the use of the site to a premises in A4 use for a period of five years has been implemented. The timber-clad shipping container serving as the bar and kitchen facility was in position and a range of outdoor furniture for patrons had been made available. The A4 use of the space appears well-located within a public setting and I have no doubt that it has enlivened the area with consequent social and economic benefits.
5. Due to the open-aired, unenclosed nature of the site, and its siting adjacent to numerous residential buildings, allowing the playing of music within the space could result in harm to the living conditions of neighbouring occupiers. Typical measures that could be employed to monitor, control or contain noise are

incapable of being implemented in a space which does not have walls, windows or other noise-insulating features. The close proximity of noise-sensitive receptors, such as neighbouring occupiers, a number of whom have identified that any music noise would undermine the enjoyment of their property, is the key reason for preventing the playing of music which would add to the noise of patrons congregating and talking during opening hours and other noises associated with deliveries and refuse/recycling collections at other times.

6. The use of the space with the condition maintained provides an opportunity for enriching the public realm and creating economic benefits whilst protecting the living conditions of neighbouring occupiers. It is not clear to me that the playing of music, whilst potentially desirable in some instances, is so essential to make the business a success. The condition is therefore necessary, relevant and directly related in scale and kind to the development permitted in the interests of the living conditions of neighbouring occupiers in accordance with, Policy DM01 of the North Devon and Torridge Local Plan (adopted 2018). This Policy, amongst other things, seeks to ensure that new development would not significantly harm the amenities of any neighbouring occupiers or uses.

Other Matters

7. I note that the appellant has a wealth of experience of entertainment venues and has been a holder of a premises licence elsewhere. Whilst I have no doubt as to his responsible contribution to the local social offering, the particularities of the appeal site and the relationship with the nearby neighbours is unique and could result in an unneighbourly form of development were the condition removed.
8. Whilst there are comments from the appellant and others that it is highly desirable to provide music within an entertainment premises, to support musicians and add to the vibrancy of the area, these factors do not outweigh the identified harm in this instance.
9. Furthermore, though the appellant indicates that the lack of contact from the Council's Planning and Environmental Protection Team resulted in the refusal of planning permission, there is nothing to suggest that the decision has been reached on anything other than the merits of the case.

Conclusion

10. For the reasons set out above, and having regard to all other matters raised, the appeal is dismissed.

Hollie Nicholls

INSPECTOR