



Appeal Decision

Site visit made on 16 February 2021

by Graeme Robbie BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 March 2020

Appeal Ref: APP/P4415/W/20/3263370

Masons Arms Public House, Bawtry Road / Northfield Lane, Wickersley, Rotherham S66 1JY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Greene King Brewing and Retailing Ltd against the decision of Rotherham Metropolitan Borough Council.
 - The application Ref RB20200642, dated 20/04/2020, was refused by notice dated 19 June 2020.
 - The application sought planning permission for siting of portable building to provide outside bar without complying with a condition attached to planning permission Ref RB2016/1286, dated 18 November 2016.
 - The condition in dispute is No. 4 which states that:
No external music shall be played outside the premises.
 - The reason given for the condition is:
In the interests of the amenities of the occupiers of nearby dwellings and in accordance with UDP policy ENV3.7 'Control of Pollution'.
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Decision

1. The appeal is dismissed.

Background and Main Issue

2. Planning permission was granted in 2016 (the 2016 application) for the siting of a portable building to provide an outside bar serverly at the appeal site, a well-established pub with existing areas of covered outside seating. The approval was subject to a number of conditions including the disputed condition which seeks to ensure that no external music shall be played outside the premises.
3. The public house sits within a large plot on the corner of Bawtry Road and Northfield Lane. The portable building is sited at the front of the building facing onto a forecourt area used for uncovered outdoor seating on the site's Bawtry Road frontage. There are further covered outdoor seating areas at the rear corner of the building, whilst further hardstanding and car parking areas, and landscaping, surround the building on both sides and to the rear.
4. There are residential properties directly to the rear of the appeal site (Willow Court) and also to the east and south on the opposite sides of Northfield Lane and Bawtry Road, respectively. Although there are houses directly opposite the site's Bawtry Road frontage, these are flanked by commercial and retail uses, with entertainment and leisure uses set amongst these. As a consequence, the area's character can be described as mixed. At the time of my recent visit to

the site the portable building was in place, albeit that due to current COVID-19 restrictions neither it nor the public house itself were open.

5. The main issue therefore is the effect that the removal of the disputed condition would have on the living conditions of occupiers of nearby dwellings.

Reasons

6. From the evidence before me it is clear that the Masons Arms is a long-established public house. Given its extensive grounds it is perhaps unsurprising that opportunities for the use of its outside spaces have been taken with the provision of covered outdoor seating areas on the building's northwest (rear) corner and the use of the Bawtry Road-facing frontage as outdoor seating. It seems to be broadly agreed by the main parties, and supported in comments from other interested parties that, pre-COVID restrictions, that the outdoor spaces at the Masons Arms were popular and often busy.
7. Whilst I accept that the appeal premises' outdoor spaces are likely to be well-used, including the forecourt area within which the temporary building is located, I also agree that the provision of the portable building as an outdoor bar servery would also have been likely to increase the attractiveness to guests of those outdoor spaces. As such, it is also likely that the intensity of use of those spaces, particularly the space that the outdoor bar servery most directly serves, would have increased as a consequence of that building's approval. Thus, the potential for increased noise and disturbance through the more intensive use of the outdoor spaces, particularly, but not limited to, the Bawtry Road frontage where the portable building is located, was a reasonable conclusion for the Council to reach.
8. However, I am not persuaded that the disputed condition would make a material difference in this respect, nor is it intended to. With or without the condition, customers would be able to come and go, consume food and drinks in this area and be served from the servery. The disputed condition cannot therefore be brought to bear on these matters, which were recognised by the Council as being a contributing factor to the area's general noise environment, and so it would be ineffective in controlling the noise and disturbance arising therefrom.
9. However, nor does it appear that there were any conditions imposed on previous permissions¹ to restrict the playing of music in an outdoor setting at the appeal premises. Whilst the portable building may well have been likely to increase the intensity of use of the outdoor area by providing an outdoor servery, it did not introduce such a use where none previously existed. I therefore have some sympathy with the appellants' argument that the disputed condition could be seen to be some sort of 'trojan horse' in order to address areas of wider concern.
10. Had the original permission containing the disputed condition related purely to the portable building and the area of its footprint, I may have been inclined to concur. That is not, however, the case. The 2016 application was clear that the extent of the application should include the whole of the public house premises and its grounds. The portable building may not solely be responsible

¹ Other than the permission to which the disputed condition relates

for the playing of music externally, but it is undoubtedly likely to be a significant factor in contributing to the attractiveness, and therefore use of, the outdoor spaces. In turn it is also likely to be an additional contributing factor to an increase in the intensity of use, general noise and activity in outside areas, to which the playing externally of music would further add.

11. I observed during my visit to the site² that, even amidst COVID-restrictions, Bawtry Road is a busy road and the commercial area was quietly bustling, albeit that beyond the pervasive visual and aural impacts of traffic movement, Northfield Lane was less busy in terms of pedestrian movements. The playing of music externally, whether recorded music or live music in the form of the occasional music festivals referred to by both main parties, is likely to add to the already significant noise environment surrounding the appeal site.
12. I accept that my visit to the site provides just a snapshot of activities, further skewed by current COVID-restrictions, and that the noise environment is unlikely to be constant. Thus, a busy road in the middle of the day may not be a busy road in the early evening or later at night, and it is in those circumstances that the Council's approach is more clearly justified. It may be that the disputed condition is a somewhat blunt tool in seeking to balance commercial interests with the living conditions of occupiers of residential properties surrounding the site and time-limited hours for the playing of music externally may provide a more appropriate balance between these interests. However, I have no technical evidence before me regarding noise levels at different times of the day and, thus, the efficacy of such an approach. I cannot therefore be certain that a condition with revised wording would be able to achieve a balance acceptable to all parties.
13. Thus, for the reasons I have set out, I conclude that the disputed condition is satisfies the 6 tests set out in the Framework and that its removal would cause material harm to the living conditions of occupiers of the residential properties closest to the appeal site on Willow Court, Northfield Road and opposite on Bawtry Road. The condition is therefore necessary to protect the amenity of residents in the local area, as set out by Rotherham Local Plan: Sites and Policies policy SP52.

Conclusion

14. For the reasons set out, and having considered all other matters raised, I conclude that the disputed condition is reasonable and necessary and passes the 6 tests of conditions set out in the Framework. The appeal should therefore be dismissed.

Graeme Robbie

INSPECTOR

² Late morning / midday