



Appeal Decision

Site visit made on 26 January 2021

by Darren Hendley BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th March 2021

Appeal Ref: APP/J3015/W/20/3261954

Star Inn, 22 Middle Street, Beeston NG9 1FX

- 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 Mr Damian McGrath against the decision of Broxtowe Borough Council.
 - The application Ref: 20/00326/FUL, dated 26 May 2020, was approved on 11 September 2020 and planning permission was granted subject to conditions.
 - The development permitted is described as to 'retain marquee extension and a sheltered bar servery and variation of condition 3 of planning approval 13/00533/FUL to permit amplified music and speech within the marquee and marquee extension.'
 - The condition in dispute is No 2 which states that: *This permission shall be for a limited period of one year expiring on the 11th September 2021 when the building works carried out under this permission shall be removed and the land reinstated to the satisfaction of the Local Planning Authority unliess (sic) prior permission has been obtained inwriting (sic) from the Local Planning Authority for its retention.*
 - The reason given for the condition is: *To protect immediate residents from excessive operational noise, in accordance with Policy 10 of the Broxtowe Aligned Core Strategy (2014) and Policy 19 of the Broxtowe Part 2 Local Plan (2019).*
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Decision

1. The appeal is allowed and the planning permission Ref: 20/00326/FUL to retain marquee extension and a sheltered bar servery and variation of condition 3 of planning approval 13/00533/FUL to permit amplified music and speech within the marquee and marquee extension at Star Inn, 22 Middle Street, Beeston NG9 1FX granted on 11 September 2020 by Broxtowe Borough Council, is varied by deleting condition 2.

Procedural Matters

2. The description of the development permitted in the banner heading above is taken from the Council's decision notice. As the effect of allowing an appeal against the decision of the local planning authority to impose a condition is not to issue a separate planning approval, I have used the same description in my decision paragraph. This is for the purposes of consistency and as the description on the Council's decision notice would remain unaltered, irrespective of my decision.
3. However, the appellant has pointed out that what the planning application sought as regards amplified music and speech related only to the marquee and not the marquee extension. This is also the effect of condition 3 on the Council's decision notice where it refers to the "internal marquee area"

concerning amplified music and speech. In addition, I am aware that the marquee extension has also been described in some of the submissions as the "external marquee area". Accordingly, I have considered the development on this basis.

Background and Main Issue

4. The Star Inn is a public house which is located on the edge of Beeston town centre. In 2013, planning permission¹ (the 2013 permission) was granted to construct single storey rear and side extensions and to erect a marquee. This was subject to condition 3 which required that no amplified music or amplified speech equipment be used in the marquee at any time. The 2013 permission has been implemented. The marquee is located on the rear elevation of the building and is also attached to the side extension.
5. The marquee was subsequently extended and a separate sheltered bar servery was erected without the benefit of the grant of planning permission. The appellant submitted a planning application to the Council to retain these structures on a retrospective basis. In addition, the appellant sought to vary condition 3 on the 2013 permission to allow amplified music and speech to be permitted in the marquee (but not in the marquee extension).
6. The Council approved the application, subject to conditions. This included condition 2 that is the subject of this appeal. The condition limits the permission to one year so that it would expire on 11 September 2021. The appellant considers that the condition is not necessary and reasonable because there is not the evidence to support such an approach and points to noise attenuation measures and the hours that the development would be in use.
7. It is understood that the condition was applied, in effect, as a 'trial run' to assess the effect of the development on the area. In particular, it concerned protecting the immediate residents from excessive operational noise, as is set out in the reason for the condition. As a consequence, the main issue is the effect of the proposal on the living conditions of the occupiers of the neighbouring residential properties by way of noise.

Reasons

8. The marquee is built of a solid construction, apart from where it adjoins the marquee extension. The marquee extension is a considerably more open structure which is sited over a raised patio-like area. Its frame supports a lightweight plastic sheet roof. Beyond the marquee extension and set at a lower ground level is an expansive beer garden area with picnic tables, as well as a children's play area. The sheltered bar servery is a modest hut-like structure which lies adjacent to the play area and the boundary of the site with Moore Gate.
9. The nearest residential property is 1 Nether Street (No 1). The gable end of this dwelling forms part of the boundary with the beer garden. No 1's own rear garden also abuts the beer garden and this part of the boundary is defined by a close boarded fence. No 1 is located adjacent to the part of the beer garden that is furthest away from the public house building. Hence, it is some distance from the marquee and the marquee extension, as well as the bar servery. The same applies as regards a number of other residential properties on Moore

¹ Council ref: 13/00533/FUL

Gate and Waverley Avenue that are found towards the far end of the beer garden.

10. The primary function of the marquee extension is to enable people to socialise, whilst enjoying their time on the premises. The bar server is for the service of drinks. The noise generated would principally be through conversation. Amplified music and speech is not permitted in these areas by virtue of condition 3 on the Council's decision notice for the proposal that is subject of this appeal. Furthermore, condition 4 prevents the servicing of customers from the bar server outside of the hours of noon to 10pm.
11. Accordingly, when the distances that the marquee extension and the bar server are located from the nearest residential properties is considered with the sources of noise, the effect would not render the proposal unacceptable. For similar reasons, I am not persuaded that the raised level of the marquee extension would cause an undue effect in this regard.
12. Amplified music and speech is permitted in the marquee under condition 3, although restricted in terms of the number and length of the sessions, and to between the hours of noon and 9pm. The marquee is a substantially more enclosed and solid structure than the marquee extension in terms of lessening the effects of noise. It is sited further away again from the nearest residential properties on Nether Street, Moore Gate and Waverley Avenue. The noise effect would be unlikely to cause unacceptable harm with the restrictions that condition 3 applies.
13. In taking these considerations together, when the activities that would be permitted are considered with the relationship with the neighbouring properties, a temporary planning permission is not justified. The rear of the public house is clearly a focus for activities and I am also mindful of the residential context of the site to the rear. However, sufficient safeguards are in place by way of the remaining conditions that seek to protect the immediate residents from excessive operational noise. Issues in relation to adherence to the conditions are a matter for the applicant and the Council. Planning controls exist irrespective of licencing, but with the controls that would still be in place through the conditions, the proposal would not be unacceptable.
14. The Council has also set out the option of the appellant making a planning application to extend or remove the condition, and supply evidence to support such an application. Providing such evidence as regards monitoring the noise effects would not seem to be straightforward because of the closure periods during the current pandemic. In any event, the appellant has taken up the alternative option of appealing on the grounds that the Council granted planning permission for the development subject to a condition that the appellant objected to, and I have considered the appeal on this basis.
15. The use of the beer garden and the play area may have a more marked effect as regards noise because parts of these open areas are substantially nearer to the neighbouring residential properties. Whilst I am not unsympathetic to the concerns of local residents in this regard, the use of these open areas is not for my consideration.
16. I conclude that the proposal would not have an unacceptable effect on the living conditions of the occupiers of the neighbouring residential properties by way of noise. As such, it would accord with Policy 10 of the Greater

Nottingham Aligned Core Strategies Part 1 Local Plan (2014) and Policy 19 of the Council's Part 2 Local Plan 2018-2028 (2019) which concern the impact on the amenity of nearby residents or occupiers and that development must identify potential nuisance issues arising from the nature of the proposal and address impacts on that development from existing land uses.

17. Hence, condition 2 is not reasonable and necessary, and its removal would comply with the tests for planning conditions that are set out in the National Planning Policy Framework and the related advice in the Planning Practice Guidance concerning the application of these tests.

Other Matters

18. The Council has already granted planning permission and the Planning Officer Report sets out why it would not be unacceptable in all other respects. I see no reasons to disagree. Whilst I am aware that the operational parts of the development were applied for in retrospect, my assessment concerns solely condition 2.
19. I do not have cause to include conditions in lieu of condition 2. The other conditions on the Council's decision notice remain unaltered and should be read alongside my decision.

Conclusion

20. The proposal would not have an unacceptable effect on the living conditions of the occupiers of the neighbouring residential properties by way of noise. I have considered all matters that have been raised but none would demonstrate that condition 2 is reasonable and necessary. Accordingly, I conclude that the appeal should be allowed and condition 2 should be removed.

Darren Hendley

INSPECTOR