



Appeal Decision

Site Visit made on 25 May 2021

by Paul Thompson DipTRP MAUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st June 2021

Appeal Ref: APP/V2004/W/21/3269294

51 Cranbrook Avenue, Kingston-Upon-Hull HU6 7SR

- 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 Mr R Scott (Kexgill Ltd) against the decision of Kingston-Upon-Hull City Council.
 - The application Ref 20/01404/RES, dated 16 November 2020, was refused by notice dated 8 January 2021.
 - The application sought planning permission for Erection of kiosk to provide 'community hub' to the rear of 51 Cranbrook Avenue without complying with a condition attached to planning permission Ref 19/00858/FULL, dated 12 September 2019.
 - The condition in dispute is No 5 which states that: At no time shall hot refreshments or hot beverage be sold from the kiosk in the interest of amenity and to prevent the establishment of a refreshment kiosk developing.
 - The reasons given for the condition are: In the interest of amenity and to comply with policy 14 of the Local Plan.
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Decision

1. The appeal is allowed and planning permission is granted for Erection of kiosk to provide 'community hub' to the rear of 51 Cranbrook Avenue, Kingston-Upon-Hull HU6 7SR in accordance with the application Ref 20/1404/RES dated 16 November 2020, without compliance with condition number 5 previously imposed on planning permission Ref 19/00858/FULL dated 12 September 2019 and subject to the following conditions:
 1. The development hereby permitted shall be carried out in accordance with the following approved plans: 2841-1A and 2841-2A.
 2. The roller shutters hereby approved shall be of a design to very closely resemble the boarding used on the kiosk and be painted or otherwise coloured in a colour to be approved in writing by the Local Planning Authority before the shutters are installed.
 3. The development hereby approved shall be carried out in accordance with the Flood Risk Assessment by P&N Design dated 18th June 2019 with particular regard to the provision of a place of safety within the applicant's office at 11 Salmon Grove.

Main Issue

2. Whether the condition is reasonable and necessary having regard to the living conditions of nearby residential occupiers or to prevent the establishment of a refreshment kiosk.

Reasons

3. The appeal concerns a kiosk situated on land to the rear of 51 Cranbrook Avenue, an end terrace property which adjoins Salmon Grove. There are residential properties in all directions in close proximity of the site. The original planning permission relates to the use of the kiosk as a 'community hub', from which information and support are provided to students of the university, but cold refreshments and beverages are also sold from it.
4. The subject planning condition currently prohibits the sale of hot refreshments and beverages from the kiosk "in the interest of amenity and to prevent the establishment of a refreshment kiosk developing". Moreover, the Council has suggested that such sales could lead to a greater number of people using the kiosk and a resultant risk of litter, noise, and general disturbance, which could affect nearby residential occupiers. The Council is also concerned about the potential for the kiosk to be used primarily for the sale of refreshments.
5. The appellants wish to remove the condition to enable the sale of hot and cold food alongside the other functions of the kiosk. They state that baguettes would be heated in a microwave, but it is not their intention to create a hot food take away or to cook meals on site. The Council accepts that incidental sales of refreshments and beverages would not require additional consent.
6. I acknowledge the Council's concerns but it has provided very limited evidence to demonstrate how the sale of hot refreshments and beverages would be likely to lead to any greater harm than that which could emanate from the sale of cold refreshments and beverages. Both could equally be bought and consumed in close proximity of the kiosk, at any time when it is open. A greater risk of harmful effects to the living conditions of nearby residential occupiers from litter, noise, and disturbance, has not therefore been substantiated. On this basis, I find that the condition is not reasonable or necessary, as the impacts it is seeking to protect against could quite legitimately already take place.
7. In the event that the sale of hot or cold refreshments and beverages was to extend beyond being incidental, the Council would be able to utilise its enforcement powers to determine whether this amounted to a change of use. The doubling up of the condition to restrict the sale of hot refreshments and beverages to prevent the establishment of an alternative use, based on perceived fears, also means that the condition is neither reasonable nor necessary in this respect.
8. In light of the above, I conclude that the planning condition is not reasonable and necessary having regard to the living conditions of nearby residential occupiers or to prevent the establishment of a refreshment kiosk. Hence, the proposal would accord with the aims of Policy 14 (a) (ii) of the Hull Local Plan 2016 to 2032, as far as it relates to the relationship of uses with one another.

Conditions

9. The guidance in the Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should restate the conditions imposed on earlier permissions that continue to have effect. As I have no information before me about the status of the conditions imposed on the original permission, I shall impose all those that I consider remain relevant.

10. Given that the original development has been started, and is the same as that for which I would be granting permission, it is not necessary to impose a time limit condition. In the interests of clarity, I have specified the approved plans. A condition requiring the design of roller shutters to very closely resemble the boarding used on the kiosk and be painted to a colour which would need to be agreed by the Council remains relevant to safeguard the character and appearance of the area. However, in the event that this has in fact been discharged, that is a matter which can be addressed by the parties. A condition relating to the flood risk assessment, particularly the provision of a place of safety is also necessary in the interests of minimising the impact of a flood event. Finally, in line with my findings above, I have removed the subject condition, which prohibited the sale of hot refreshments and beverages from the premises.

Conclusion

11. For the reasons given above, I conclude that the appeal should succeed.

Paul Thompson

INSPECTOR