



Appeal Decision

Site Visit made on 30 June 2021

by A Tucker BA (Hons) IHBC

an Inspector appointed by the Secretary of State

Decision date: 13 July 2021

Appeal Ref: APP/U1105/W/21/3270924

The Bicton Inn, 5 Bicton Street, Exmouth, Devon EX8 2RU

- 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 Mrs Alison Brockbank against the decision of East Devon District Council.
 - The application Ref 20/1543/FUL, dated 13 July 2020, was approved on 19 January 2021 and planning permission was granted subject to conditions.
 - The development permitted is yard/smoking area and installation of new door.
 - The condition in dispute is No 04 which states that: The external yard/ smoking area hereby approved as shown on drawing no R11720-2B shall not be open for use by customers after 10pm.
 - The reason given for the condition is: To protect the residential amenities of the occupiers of surrounding properties in accordance with policies D1 (Design and Local Distinctiveness) and EN14 (Control of Pollution) of the East Devon Local Plan 2013-2031).
-

Decision

1. The appeal is dismissed.

Background and Main Issue

2. Planning permission was granted earlier this year for a yard / smoking area and installation of new door. Condition 04 prevents the use of the area for customers after 10:00pm. The main issue is whether this condition is necessary to safeguard the living conditions of the occupiers of nearby residential dwellings.

Reasons

3. Bicton Inn is located in a dense urban area, occupying a corner plot and attached to other buildings to either side. Its south and west elevations front the road directly without a pavement, and face out towards other buildings on the opposite side of the road, which are mainly dwellings.
4. The longer elevation of the building faces onto South Street. At its northern end the building is single storey fronting the street, with an area that looks like a walled yard as the existing roof is set down below the height of the wall. This roof would be removed to make the area external, for customers to use as a smoking area.
5. The open yard would be very close to the neighbouring dwelling to the north, No. 2 Pound Street, which has two first floor windows that look out towards and almost directly over the yard area. The impact of allowing customers to use this area up until the time that the business closes would be very

significant to the occupiers of this residential unit, with the potential to affect their quality of life, owing to the level of noise from people gathering in the area, and the odour from people smoking in such close proximity to the windows of this nearby dwelling.

6. The site is also close to the dwellings on the opposite side of the road. The impact on the occupiers of these dwellings would be less, as they are set further away from the yard, and are already impacted to a certain extent by the existing activity of the intervening road. However, if the yard was used up to the time that the business closed the dwellings opposite would still be close enough for their occupants to experience some adverse impact.
7. It is suggested that the 10:00pm curfew would force customers out onto the street, in a manner that could not be controlled by the management of the business. After 10:00pm any customers who still want to smoke would have to stand out on the road. There is no space outside the building that is comfortable to gather or is away from passing traffic. It is therefore not likely that significant numbers would gather outside for such purposes for any length of time. In addition, only those customers who want to continue to smoke would need to leave the premises at 10:00pm; the rest of the building would remain available for non-smokers for the rest of the evening.
8. I am thus satisfied that the incidence of customers popping outside to smoke after 10:00pm would be likely to be occasional and for short periods of time. This would be quite different to the use of the yard area, which would provide a comfortable area that customers would be likely to use for long periods, or even for their whole visit, increasing the impact on nearby dwellings.
9. For these reasons I am satisfied that the condition is necessary to manage the impact of the proposal on the living conditions of nearby residents. It is precisely worded to provide a time when the area should no longer be used, which could be easily managed by staff as the yard would be accessed by a door that could be shut and locked if necessary from 10:00pm. It would be clear if the yard is used beyond 10:00pm and I can see no reason why the Council would not be able to enforce the condition.
10. The condition directly addresses an identified impact on neighbours and is directly relevant to the development permitted. This is a planning matter and relates to Policies D1 and EN14 of the East Devon Local Plan 2013 to 2031, which seek to ensure that development proposals do not adversely affect the amenity of occupiers of adjoining residential properties or result in unacceptable levels of noise or odour.
11. The condition does not require compliance with other regulatory regimes. The use of an informative instead would not have any legal weight or give the Council an adequate means of control for planning purposes.
12. In summary, I am satisfied that the condition meets all of the tests set out at paragraph 55 of the National Planning Policy Framework and should therefore be retained.

Conclusion

13. For the reasons above, the appeal should be dismissed.

A Tucker

INSPECTOR