



Appeal Decision

Site visit made on 13 July 2021

by Paul Cooper MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 July 2021

Appeal Ref: APP/N3020/W/21/3268929

Tipsy T, 908 Woodborough Road, Nottingham NG3 5QR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr David Smith (CND Properties) against the decision of Gedling Borough Council.
 - The application Ref 2020/1048, dated 19 October 2020, was refused by notice dated 10 February 2021.
 - The development proposed is retention of rear extension with covered sides and smoke shelter with mock bar and change of use to gin bar/pub (sui generis)
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Decision

1. The appeal is dismissed.

Procedural Matter

2. I have used the description in the banner heading above as it describes the development more accurately and concisely than the application form. I note the appellant has utilised the same in the appeal form. I am satisfied that neither party is prejudiced by this course of action.

Main Issues

3. The main issues in this appeal are the effect of the development on the character and appearance of the area and the impact on the living conditions of nearby residents in terms of overlooking and noise/anti-social activities.

Reasons

Character and appearance

4. The appeal property is an existing food & drink use, the frontage of which is in a busy commercial area. The rear of the property has a rear extension and a beer garden, which is adjacent a car park behind a boundary fence and looks toward a residential area.
5. The frontage looks acceptable and fits in with the character and appearance of the area, as it is surrounded by retail units and other commercial establishments.
6. The rear of the property looks toward a residential area, and the elevated position of the rear extension emphasises the point that generally, the commercial units set the character and appearance of the area to the front elevations, and I find that the rear extension, the beer garden and the rear

access (I understand this has been used but is currently not in use) cause harm to the character and appearance of the immediate area in which it is set.

7. With the exception of the car park, the rear of the commercial units gives way to the residential area. The expansion of commercial units into the residential area is an unwelcome incursion toward that residential area and is to be resisted in order for the two separate areas (the commercial and the residential) to co-exist without problems, which, from the evidence in front of me, appears to have been breached by the extension and the beer garden, and the subsequent problems caused.
8. In conclusion on this issue, I find the extension and the beer garden to have caused harm to the character and appearance of the area, as it relates to the residential area to the rear of the commercial units. Therefore, I find conflict with Policy 10 of the Greater Nottingham Aligned Core Strategies Part 1 Local Plan (2014) (the ACS) which, amongst other matters, expects development to make a positive contribution to the public realm and sense of place, as well as Paragraph 130 of the National Planning Policy Framework (2021) which expect development to function well and add to the overall quality of the area.

Overlooking

9. The elevated rear extension does allow for views out from that high point of the rear area. These views are largely mitigated by landscape trees with assist in screening the rear area from the residential properties beyond.
10. In terms of overlooking, having viewed the outlook from the rear of the appeal premises, I consider that the impact on residents, with a specific focus toward No 4 Bennett Road, not to be of a level that would cause material harm to the living conditions of nearby properties.
11. Therefore, with regard to this issue, I find that the proposals are in accordance with Policies LPD32 and LPD50 criteria (f) of the Gedling Borough Council Local Planning Document Part 2 Local Plan (2018) (the LPD) which, amongst other matters, expect development to not have a significant adverse impact in terms of overlooking.

Noise / Anti-social activities

12. At the time of my site visit, the rear extension contained 3 tables, and a wall-mounted television. The beer garden contained a number of gazebos and table umbrellas, 10 tables, some of which were undercover via the gazebos or table umbrellas and three patio heaters. The "mock bar" was not in evidence. There was various signage on the walls reminding patrons to be quiet and respectful of the surroundings and others indicating that the only entrance in use was to the front of the premises and that the garden would close at 10pm. There was no-one using the beer garden or rear extension at the time of my site visit, as it was mid-morning and slightly damp conditions.
13. Amongst the evidence supplied by the Council are a number of objections at the planning application stage from some of the consultees and local residents, and some of the residents have objected again at appeal stage. I understand from that evidence that the extension was "boxed-in" during the COVID lockdowns and the extension and beer garden are used regularly. From these objections I understand that music has been played outside, the rear garden area could be accessed via the Council car park and the area has been used

beyond midnight on many occasions. There are other allegations regarding anti-social behaviour late at night and it appears that Consultees have been involved dealing with complaints against the premises.

14. Counter to this is the response by the appellant, disputing and denying many of the claims made by local residents, stating that the premises are operated in a reasonable and responsible manner.
15. Whilst I have not seen the premises fully operational, from the evidence supplied I can ascertain that the extension and beer garden to the premises are well used and I can fully understand, given the potential for the numbers of patrons that could use that area, especially under the influence of alcohol, the noise and anti-social behaviour would be easy to create, difficult to manage, and subsequently cause harm to the living conditions of local residents, be it by the allegations of music being played, or just the noise of patrons themselves.
16. In terms of the possibility of imposing conditions to try and mitigate against such harm, I find that conditions would be impossible to enforce and would not meet the six tests set out in Planning Practice Guidance.
17. As a result, in light of the evidence before me, from a number of sources, I cannot be convinced that the premises can operate in the rear area and beer garden without causing harm to the living conditions of local residents. As such, on this issue, I find that the proposals are contrary to Policies LPD32 and LPD50 criteria (f) of the LPD that, amongst other matters, expect development to take consideration of noise and the level of activity on site, as well as cause significant adverse impact on the amenity of nearby residents and occupiers.

Conclusion

18. For the reasons given above, I therefore conclude that the appeal be dismissed.

Paul Cooper

INSPECTOR