



Appeal Decision

Site Visit made on 11 May 2021

by John Dowsett MA DipURP DipUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th August 2021

Appeal Ref: APP/W4515/W/21/3267219

Omni Cafe, 12, Front Street, Monkseaton, Whitley Bay NE25 8DF

- 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 Susanne McGarry (Omni Cafe) against the decision of North Tyneside Council.
 - The application Ref: 20/01074/FUL, dated 1 August 2020, was approved on 16 November 2020 and planning permission was granted subject to conditions.
 - The development permitted is described as: Erection of timber frame pergola, covering canopy, to side aspect of Omni cafe.
 - The conditions in dispute are Nos. 2 and 4 which state that: "The pergola shall not be used by customers or staff outside of the hours of 08:00 to 21:00 on any day", and "All illumination within the pergola shall be extinguished outside of the permitted hours of use (as set out in condition no.2)".
 - The reasons given for the conditions are: "To safeguard the occupiers of adjacent properties from undue noise or other associated disturbance" (Condition 2), and "In the interests of the amenity of neighbouring properties" (Condition 4).
-

Decision

1. The appeal is allowed, and the planning permission Ref: 20/01074/FUL, for erection of timber frame pergola and covering canopy, to side aspect of Omni Cafe at Omni Cafe, 12, Front Street, Monkseaton, Whitley Bay NE25 8DF, granted on 16 November 2020 by North Tyneside Council, is varied by deleting condition 2 and substituting for it the following condition:
 - 2) The pergola shall not be used by customers or staff outside of the hours of 08:00 to 22:00 Monday to Saturday, and 09:00 to 21:00 on Sundays and Bank Holidays.

Preliminary Matters

2. The development has already been carried out and I was able to see it when I visited the site.
3. On 20 July 2021 the Government published a revised version of the National Planning Policy Framework (the Framework). None of the revisions to the Framework are of direct relevance to the principal disputed matters in this appeal. I have determined the appeal with reference to the revised Framework.

Main Issue

4. The main issue in this appeal is whether the disputed conditions are necessary and reasonable having regard to the effect of the proposal on the living conditions of the occupiers of nearby residential properties.

Reasons

5. The appeal site is located at the end of a terrace of two storey buildings with additional accommodation within the roof space served by dormer windows. The ground floor of the terrace is occupied by commercial premises with residential accommodation above. The ground floor of the appeal building is in use as a café. To the side elevation of the building, a timber framed pergola with a fabric roof and sides has been erected on a wide area of the footway adjacent to the junction of front Street and Seaton Crescent. This is used as an outdoor seating area.
6. The appeal site is located at the edge of a small district centre situated on a main road through the area. There are residential properties to the side and to the rear of the appeal site and the upper floors above the café are also in residential use. On the opposite side of Front Street to the appeal site is a further dwelling house and a large former dwelling that is now used as a care home, with further terraced houses to the north east. To the south west of the dwellings opposite are further commercial properties with residential properties above. Monkseaton Station on the Tyne and Wear Metro system is located a short distance to the north east of the appeal site.
7. The Council advise that the café premises to which the pergola is attached is permitted to open between the hours of 08:00 to 22:00 Monday to Saturday, and 09:00 to 21:00 on Sundays and Bank Holidays. Condition 2 of the planning permission for the pergola restricts its use to between 08:00 to 21:00 hours on any day. The appellant seeks to have this condition varied to allow the pergola to be used until 22:00 on any day. It is also sought to have Condition 4, which requires the lights within the pergola to be turned off when it is not in use, removed.
8. Although the pergola was not in use at the time of my site visit and the tables and chairs had been removed as the café premises were closed, the photograph submitted with the application shows that it can accommodate approximately 10 customers.
9. Although there are residential properties in proximity to the appeal site, these are located on the edge of the district centre which, in addition to the café premises, contains two hot food takeaways and two public houses that will also operate into the evening hours. This, in combination with the main road location and presence of the Metro station, will result in higher levels of activity in the area until later in the evening than might be experienced in a purely residential area.
10. The closest residential properties on Seaton Crescent and the section of Front Street to the north of the appeal site are approximately 15 metres distant. At present these will be exposed to some noise and disturbance from patrons leaving the café at closing time and from other activities in the area.
11. It is not clear from the application whether the flat above the café premises is occupied independently of the café. However, even if this were to be the case, this premises will presently experience a degree of disturbance from the use immediately below, which can presently operate for longer than the current permitted hours for the pergola and outdoor seating.

12. Whilst noting the comments of the Council's Environmental Health Officer, the outdoor seating area is only capable of accommodating a small number of patrons. I have no substantiated evidence before me that would indicate that an additional hour of operation would result in significant extra noise or disturbance, over and above that which already occurs in the area, which would result in harm to the living conditions of nearby residents. I have also had regard to the fact that no representations raising objections to the proposal have been received from residents in the area.
13. Varying the Condition 2 to align the use of the outside seating area with the permitted operating hours of the café premises would not conflict with the relevant requirements of Policy DM5.19 of the North Tyneside Local Plan 2017 which expects that developments that may cause among other matters noise pollution to incorporate measures to not cause unacceptable impacts on people or the environment. Nor would it conflict with the requirements of the Framework.
14. Consequently, I find that the condition restricting the use of the pergola to 21:00 is not necessary. However, the variation in wording suggested by the appellant does not reflect the permitted opening hours of the premises. Whilst I accept that the current operator does not open the premises on Sundays, the planning permission for the use of the café relates to the building and it could operate on a different basis in the future. As a result, it is necessary to include a condition that restricts the use of the outside seating area to the same operating hours as the main café premises.
15. Regarding Condition number 4, I saw when I visited the site that there are a number of small light bulbs strung along the outside of the pergola structure. A number of similar light bulbs are also strung across the elevation of the main café building facing Front Street. Beneath the covering of the pergola, there are approximately 50 similar light bulbs suspended from the top of the frame. These internal lights were generally above the level of the rolled up fabric sides of the structure, which will limit the level of light spill from these to a certain extent.
16. Other than seeking to ensure that the lighting is turned off when the seating area is not in use, the Council have not raised any particular concerns in respect of the lighting. From what I have read and from what I saw when I visited the site, the level of illumination that would be provided by the lighting would not be intrusive during the times that the café is permitted to trade.
17. I would, however, agree with the Council's position that it is necessary to require that this illumination is turned off when the premises are not trading to ensure that light from it does not intrude on the windows of nearby residential buildings at unsocial hours. The condition as presently worded links the operation of the lighting with the opening hours of the premises that are set out in Condition 2. In order to preserve the living conditions of the occupiers of nearby residential properties, it is necessary and reasonable to continue to do so and, consequently, this condition should be retained. It is not necessary to delete or vary this condition because, due to wording of condition, the permitted times for the operation of the lighting are automatically varied by any alteration to the operating times set out in Condition 2.
18. I therefore conclude that Condition 2 as presently worded is not necessary in order to prevent harm to the living conditions of the occupiers of nearby

residential properties, or to secure compliance with Policy DM5.19 of the Local Plan, and consequently can be varied to align the operating hours with those of the café premises. Condition 4, however, is required for this purpose and should be retained unaltered.

Other Matters

19. The appeal site is located within the Monkseaton Conservation Area. No substantive evidence has been provided by either party in respect of the significance of the conservation area. However, from what I saw when I visited the site, in so far as it relates to this appeal, the significance of the conservation area is derived from the historical evidence it provides of a smaller settlement that expanded in the nineteenth and twentieth centuries, in part due to the coming of the railway, and from the aesthetic value derived from the design and layout of the buildings within it. From what I have read and from what I saw when I visited the site, neither the appearance of the pergola, nor the extended operating hours that are sought would cause harm to the character and appearance of the conservation area.
20. I have also noted that the Highway Authority have not raised any objection to the proposal and from my observations during the site visit I have no reason to reach a different conclusion.

Conditions

21. To ensure that the development does not cause harm to the living conditions of the occupiers of nearby residential properties, and to prevent the external seating area from being used outside of the permitted operating hours of the café premises, it is necessary to impose a condition that aligns the use of the external seating area with those operating hours, namely 08:00 to 22:00 Monday to Saturday, and 09:00 to 21:00 on Sundays and Bank Holidays.
22. Conditions 1, 3 and 4 of Planning Permission reference: 20/01074/FUL remain unaltered.

Conclusion

23. For the above reasons, I conclude that the appeal should be allowed.

John Dowsett

INSPECTOR