



Appeal Decision

Site Visit made on 6 July 2021 by G Sibley MPLAN MRTPI

Decision by Martin Seaton BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 September 2021

Appeal Ref: APP/P1805/W/21/3273749

1 Bear Hill, Alvechurch B48 7JX

- 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 Anton Ndreca of Tranquil Bar Limited against the decision of Bromsgrove District Council.
 - The application Ref 20/01100/FUL, dated 23 July 2020, was refused by notice dated 25 March 2021.
 - The development proposed is existing unit has been sub divided, one unit to have change of use to a drinking establishment.
-

Decision

1. The appeal is dismissed.

Appeal Procedure

2. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Preliminary Matters

3. The description of the development has been taken from the decision notice because the original description of development stated that the application sought permission to convert the unit to A5 use. During the validation of the application, it was determined that the appellant sought permission for a drinking establishment and the use they sought permission for was Sui Generis.
4. The Government published on 20 July 2021 a revised version of the National Planning Policy Framework. Accordingly, and in light of the reference made to the previous iteration of the Framework within the submitted evidence, the parties have been provided with a further opportunity to make submissions in respect of the publication. Any comments which have been received have been addressed within the appeal decision.

Main Issue

5. The effect of the proposed development upon the living conditions of the neighbouring occupiers with regards to noise disturbance.

Reasons for the Recommendation

6. Half of the ground floor of the building has been converted to a shop and the appeal seeks permission to convert the other half to a drinking establishment, with the upper floors in residential use. The building is located near to the

centre of Alvechurch where there are several commercial uses around the site, mixed in with residential uses.

7. A licence has been issued for the premises, including for the sale of alcohol, during the periods 09:00-23:30 Sunday to Thursday and 09:00-01:30 Friday to Saturday, with use of the proposed area to the rear of the premises limited to 22:00 daily. However, I am mindful that the appellant has not specified what opening hours they were applying for on the application form and differing opening hours have been indicated in the respective suggested conditions.
8. The proposed acoustic measures within the building would limit the noise disturbance generated inside of the building. I am satisfied that this would ensure that the living conditions of the occupiers of the neighbouring buildings and the apartments above the drinking establishment would not be significantly or adversely affected by the noise generated during the later opening hours.
9. The buildings along Bear Hill are not typically night-time establishments and are closed outside of normal working hours. There is a public house along Swan Street, but that building is located a sufficient distance away from the buildings along Bear Hill that the occupiers are unlikely to be affected by the noise generated at the pub. As such, it would be reasonable to conclude that the external ambient noise levels locally would be relatively low during the evenings.
10. To the rear of the unit is an open area of land that is proposed to be used not only as the smoking area for the drinking establishment, but also from the indication of the suggested conditions as an outdoor space for drinking. This area is bound by gardens on most sides, including the private external space for the apartments above the building. Further to this, there are a number of apartments around the site that directly overlook the proposed smoking area.
11. The proposed smoking and outdoor area would be located a short distance from the habitable rooms for several apartments and given that in some instances they have no outdoor space, or very limited outdoor space, those habitable rooms are the occupants only living space. Taking into account the size of the outdoor space and capacity for a large number of people, I am concerned that the noise generated by those using the outdoor area would filter into those apartments and create an unpleasant environment for the occupiers to use, particularly during the evenings, when they are most likely to be at home. This would contrast significantly with the existing noise environment and would result in unacceptable harm by virtue of noise and disturbance to their existing living conditions.
12. Additionally, the only outdoor space available for the residents of the apartments above the proposed drinking establishment, as well as the gardens for a number of surrounding dwellings, is located directly next to the proposed smoking area. As a result, the noise generated by those using the smoking area would be essentially unfiltered and would create a significantly less pleasant and less usable outdoor space for the occupiers of those dwellings. Overall, the proposed use of the outdoor space in association with the drinking establishment would introduce a bad neighbour use next to a number of residential uses that already have limited private space.
13. The appellant has suggested the use of a temporary condition for a two-year period to establish whether the proposed use would cause harm to the

neighbouring occupiers. Additional conditions were also suggested that would limit the hours the garden would be open and to stop customers from taking drinking receptacles outdoors after certain times. However, for the reasons set out, I am satisfied that the use of the outdoor area for even a temporary period would result in unacceptable harm to the living conditions of neighbouring occupiers through noise and disturbance, and a condition securing an unspecified restriction of the hours of use would for the same reasons also not resolve the issue. The suggested conditions would therefore fail the tests set out in paragraph 56 of the National Planning Policy Framework.

14. The noise and disturbance that would be created by those using the outdoor area would result in a harmful impact on the living conditions of neighbouring occupiers. Therefore, the proposed development would be contrary to the High Quality Design Supplementary Planning Document (adopted 2019) which supplements the advice contained within Policy BDP 19 of the Bromsgrove District Plan 2011 – 2030 (BDP) (adopted 2017) which states that development proposals should maximise the distance between noise sources and noise sensitive areas such as residential, whilst also taking account the implication of the existing night time use of the locality. Additionally, the proposal would be contrary to Policy BDP1 of the BDP which states that development proposal should consider the compatibility of the proposal with adjoining uses and the impact on residential amenity.

Conclusion and Recommendation

15. There are no material considerations that indicate that the appeal should be determined other than in accordance with the development plan. Therefore, for the reasons given above and having had regard to all other matters raised, I recommend that the appeal should be dismissed.

G Sibley

APPEAL PLANNING OFFICER

Inspector's Decision

16. I have considered all the submitted evidence and the Appeal Planning Officer's report and, on that basis, I agree with the recommendation and shall dismiss the appeal.

Martin Seaton

INSPECTOR