



Appeal Decision

Site Visit made on 28 September 2021

by F Rafiq BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 October 2021

Appeal Ref: APP/N4720/W/21/3277815

Unit 7, Foundry Industrial Estate, Richardshaw Lane, Stanningley, Pudsey LS28 6BN

- 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 East Restaurant against the decision of Leeds City Council.
 - The application Ref 20/07806/FU, dated 25 November 2020, was refused by notice dated 27 January 2021.
 - The development proposed is described on the application form as an existing first floor smoking area to be enclosed with block and render walls to match the existing with two retractable roofs as per the drawing.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. A revised National Planning Policy Framework was published in July 2021 (the Framework). Whilst the paragraph numbers have changed in regard to those relevant to the main issue of this case, the substance thereof remains the same as the 2019 iteration. I have sought comments from the main parties and taken any comments made into consideration.
3. Different individual names were provided on the planning application and appeal forms. In relation to the latter, it has been confirmed that the individual is a manager of the company named on both forms. I have therefore utilised the company name for the appellant.

Main Issue

4. The main issue is the effect of the proposal on the living conditions of the occupiers of neighbouring residential properties with particular regard to noise and disturbance.

Reasons

5. The appeal site comprises a detached building that is used as a restaurant. It is a two-storey building facing Richardshaw Lane with a single storey rear projection, above part of which is an existing roof terrace. The surrounding area contains a range of uses, including a variety of industrial and employment uses as well as food and other commercial establishments in a row of terraced properties opposite. Within this mix there are a number of residential properties in close proximity to the site, including a number of terrace rows and a detached dwelling on Richardshaw Road. My attention has also been

- drawn to a site to the rear which has planning consent for 7 dwellings where construction works were ongoing at the time of my visit.
6. The appeal proposal seeks to enclose an existing roof terrace and to utilise the remaining flat roof area beyond it as a roof terrace. I note the enclosure of the existing roof terrace would reduce the transmission of sound to some extent. However, the additional roof terrace area would be further to the rear than the existing, and in a more direct line of sight to some of the properties within the nearest terrace row on Richardshaw Road. It would also be closer to the dwellings under construction on the site to the rear beyond Parkfield Terrace.
 7. The additional roof terrace would be enclosed by a canvas roof, but it would be open on three sides. This open aspect would do little to reduce noise emanating from this space, particularly if the retractable roof was open. To the contrary, the proposal is to improve the experience of patrons and a covered external area could result in greater usage of this space such as providing an area to enjoy a drink before or after a meal. I appreciate that the proposal is not for a night club and nor is there an intention to increase the number of covers at the restaurant, but the proposal would nevertheless provide an outdoor space for patrons to utilise. I have no reason to doubt that that there would be no increase in speakers in the area to be enclosed. However, as well as noise from patrons talking on the additional terrace area, the enclosed area would feature wide bi-folding doors which when open, would result in internal noise emanating out from the premises.
 8. The appeal site is situated on a main road in a mixed-use area. The area where the development is proposed is however to the rear and closer to the residential properties than the main two storey section of the appeal building. The introduction of an additional large space that could be used until 12 midnight through the week, would likely result in significant noise and disturbance to nearby residential occupiers. I note that there is no substantive evidence before me regarding existing acoustic conditions here, likely noise levels arising from the proposal, or of any mitigation measures that might be adopted.
 9. Given the above, I conclude that the proposal would have an unacceptable adverse effect on the living conditions of neighbouring occupiers with regard to noise and disturbance. As such, it would conflict with saved Policy GP5 of the Leeds Unitary Development Plan (Review 2006), which requires proposals to, amongst other matters, avoid problems of loss of amenity. It would also be contrary to the Framework, which seeks, at Paragraph 130, a high standard of amenity for existing and future users.
 10. Although it has been stated by the appellant that there have been no previous complaints regarding noise, the Council have referenced complaints from nearby occupants to a 2019 application for an extended outside roof deck and further complaints since that application. The evidence before me in that respect is therefore ambiguous, albeit inherently none relates to the proposal before me, which I have in any event considered on its own merits.
 11. I note that the Council does not expressly object to the proposal on grounds of parking, use or potential for anti-social behaviour. As the neighbouring property is in office use, I do not consider that there would be harmful overlooking, particularly given the presence of existing windows on the

southern elevation and the existing roof terrace. A lack of harm in these areas are neutral matters and do not weigh in favour of the proposal.

Conclusion

12. For the reasons given above, having considered the development plan as a whole, the approach in the Framework, and all other relevant material considerations, the appeal is dismissed.

F Rafiq

INSPECTOR