



Appeal Decision

Site visit made on 25 October 2021

by L Wilson BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 November 2021

Appeal Ref: APP/V2004/W/21/3279933

398 Holderness Road, Kingston Upon Hull HU9 3DW

- 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 Joe Rodgers, Rosebud Enterprises, against the decision of Kingston Upon Hull Council.
 - The application Ref 21/00795/FULL, dated 21 May 2021, was refused by notice dated 20 July 2021.
 - The development is described as retrospective approval for the erection of a canopy structure.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development above is taken from the application form and includes the word "retrospective" however, this term does not amount to an act of development. I noted on my site visit that the development had been carried out. From the evidence before me, it is clear that the proposal is to retain the development that has already occurred, and I have dealt with it on that basis.

Main Issue

3. The main issue is the effect of the development on the living conditions of the occupiers of 3 Southcoates Lane, having regard to noise and disturbance.

Reasons

4. The appeal site is a former bank now used as a public house which is located at the junction of Holderness Road and Southcoates Lane. The area is characterised by retail premises and residential properties. The large canopy structure is situated within the courtyard area and adjacent to the common boundary shared with 3 Southcoates Lane. I noted on my site visit that there is also seating to the front and side of the building, albeit with no canopy.
5. No 3 has windows to the side elevation facing the appeal site and a garden to the rear. The main windows to the front and rear elevation of No 3 are also in relatively close proximity to the structure.
6. The appellant highlights that the operational hours of the canopy area are 12:00-20:00, at which point the lights are turned off, and they have suggested a planning condition to reflect this. I understand that an environmental health officer visited the site, within the operating hours, due to a complaint being

- received. Their consultation response highlights that raised voices could clearly be heard inside No 3, with the windows being closed, and from the rear garden.
7. I acknowledge that before the structure was constructed, the area had been used for outside seating and could continue to be used for that use. In addition, the appellant suggests that the covered canopy structure might be mitigating noise and improving privacy and state that there has been no increase usage of the beer garden and footfall has not increased. I note they have not submitted any substantive evidence to support these claims.
 8. Nonetheless, the structure results in a more attractive seating area for customers which is likely to be used more frequently than the previously exposed seating area due to the roof, lighting and heaters. Thus, it is likely that the scheme results in more activity in the area throughout the year.
 9. Even with the suggested condition, the scheme results in noise and disturbance which adversely harms the living conditions of the occupiers of adjoining residential units, particularly No 3, both inside the dwelling and the enjoyment of its garden. Although some of the nearby windows are not main windows, the scheme has a harmful affect upon habitable rooms of No 3. This is due to the proximity of the structure with No 3, the structure's size and use with associated lighting and heating.
 10. I appreciate that COVID-19 has had an impact upon the business and the appellant asserts that the structure was constructed to maintain pub viability. They highlight that the covered area has helped the pub to continue trading, maintain social distancing and reduce the risk of transmission which has helped to protect jobs and provide a social outlet. The appellant also highlights that they have a good relationship with the licensing authority and no enforcement action has been taken. The structure is large and has been located within a sensitive location directly adjacent to the common boundary and no substantive evidence has been submitted to justify the canopy in this location and to demonstrate that it is required for pub viability. These considerations do not outweigh the harm identified above.
 11. For the reasons given above, the proposal results in the living conditions of the occupiers of No 3 being adversely affected, having regard to noise and disturbance. Consequently, it conflicts with Policies 49 and 50 of the Hull Local Plan 2016 to 2032 (2017). These policies seek, amongst other matters, to avoid significant adverse impacts on residential properties as a result of noise and light from new development. The scheme also conflicts with chapter 12 of the National Planning Policy Framework which seeks, amongst other matters, to ensure developments create places with a high standard of amenity for existing and future users.

Other Matters

12. 398 Holderness Road is a prominent, locally listed building which is located within the Holderness Road East Conservation Area. The development comprises a lightweight structure of simple form, located to the rear of the site, which has a neutral impact upon the building and Conservation Area. Thus, the development does not cause harm to the significance of the heritage assets. My finding in this respect is a neutral factor which does not serve to weigh either for or against the proposal.

13. The appellant has highlighted their frustrations with the Council. Such concerns would be a matter to take up with the Council and they do not impact the planning merits of the case.

Conclusion

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

L M Wilson

INSPECTOR