



Appeal Decision

Site visit made on 8 February 2022

by C Shearing BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 March 2022

Appeal Ref: APP/Q3820/W/21/3276793

32 Broadfield Barton, Broadfield, Crawley RH11 9BA

- 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 Ulhaq against the decision of Crawley Borough Council.
 - The application Ref CR/2021/0149/FUL, dated 26 February 2021, was refused by notice dated 27 May 2021.
 - The development proposed is the erection of an outdoor wooden structure.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. During the consideration of this appeal the revised National Planning Policy Framework July 2021 (the Framework) has been published. The main parties have had the opportunity to comment on the relevance of the Framework to this appeal.
3. I have observed that the development has been carried out.

Main Issue

4. The main issue is the effect of the development on the living conditions of nearby residents, with particular regard to noise and odour.

Reasons

5. The appeal relates to a ground floor unit within the Broadfield Neighbourhood Centre, which is currently occupied by Café Havana. This parade comprises a mix of commercial uses at the ground floor level with residential accommodation on the upper floors which have private outdoor amenity spaces on the flat roof at the rear of the first floor level. Additional residential accommodation exists beyond this parade, with the closest being Barton House to the east.
6. While the rear courtyard area could be used in connection with the use of the appeal site, the erection of the structure over almost the entirety of the courtyard has increased the ability of this space to be used throughout the year and for longer periods of the day. Due to the size of the structure and its coverage of the courtyard, it is likely that it could accommodate a substantial number of users in addition to those inside the building.
7. Based on the information available, which includes comments from third parties, confirmation of complaints made to the Council's Environmental Health

department, as well as evidence of actions by the Council under separate Environmental Health legislation, I understand the use of the rear courtyard, which is intensified by the structure, causes noise disturbance to occupants of nearby properties. As the appellant wishes to use the structure for both the café and shisha lounge uses, it also has the ability to cause disturbance through odours to nearby occupiers, particularly to the private amenity areas immediately above the site.

8. Despite the concerns relating to the lawfulness of the existing use, on the basis of the information before me, I have no evidence to suggest that the use of the structure for the purposes described within the supporting documents would not cause disturbance to those nearby occupiers through noise or odour. Even if a condition were imposed to restrict the hours of use of the structure, there is no evidence before me to suggest that harmful disturbance would not occur during the hours permitted. Therefore, I do not consider that the harm identified could be addressed by such a condition. The proposals would conflict with the aims of policies CH3, EC4 and ENV11 of the Crawley Borough Local Plan 2015 insofar as they seek to prevent adverse harm to amenity. There is also conflict with paragraph 185 of the Framework insofar as it requires new development to mitigate or reduce to a minimum the adverse impacts resulting from noise.
9. I have observed the public house at the end of the parade to the west and its associated enclosed outdoor space. However, this premises has a different relationship to the nearest residential properties, and I note the Council's comments regarding the lawfulness of the enclosure. The appellant also refers to an alternative premises in Crawley where outdoor seating was granted planning permission. Given its distance from the appeal site, the difference in the scale of the development, and its town centre location, I do not consider this to be directly comparable. Other examples of premises serving shisha have also been provided however I do not have full details of those outdoor spaces and relationships to nearby residential properties. As such the examples given do not alter my assessment.

Other Matters

10. I note the Council's concern that the existing use of the site is unlawful. However, the appeal before me relates to the wooden structure. As I am dismissing the appeal for harm to the living conditions of nearby occupiers, this is not a matter that I need to consider further.
11. The Council has referred to additional policy EC8 of the Local Plan in their reason for refusal. However, this policy relates to change of use within Neighbourhood Centres which is not directly applicable to the development which is the subject of this appeal. As such, and since I am not considering the change of use, I find no conflict with this policy.
12. Comments have been received by the Council from Natural England since the Council made its decision, in respect of the impact of water abstraction on the wildlife sites in the Arun Valley. Similarly, as the appeal is dismissed for the above reasons, this is not a matter I intend to consider further.
13. I have had regard to the other issues raised by third parties. I note that the development was carried out without first receiving planning permission, however, this has not affected how I have dealt with the appeal before me. I

note concerns relating to health and safety and compliance with Covid-19 guidelines. However, these matters are covered by other regulatory regimes outside the planning system.

Planning Balance and Conclusion

14. I find that the development causes harm to the living conditions of the occupants of nearby properties in terms of noise and odour. To this harm I attach substantial weight.
15. The proposals would support and benefit the existing business through increasing capacity, and I note that the structure was intended to allow the premises to respond to guidelines for Covid-19. Given the transient nature of guidance surrounding the pandemic at this time I afford this benefit, and the benefit of supporting the business during this time, moderate weight.
16. The Council have found that the wooden structure does not cause harm to the character and appearance of the area and from my assessment and site visit I agree with their conclusions. However, I do not consider this amounts to a benefit of the development which weighs in favour of granting planning permission.
17. Overall, I consider the benefits of the development do not outweigh the harm that arises to the living conditions of the nearby occupants in terms of noise and odour. The development would be contrary to the development plan as a whole and this conflict is not outweighed by other material considerations in this instance. The appeal should therefore be dismissed.

C Shearing

INSPECTOR