



Appeal Decision

Hearing held on 1 February 2022

Site visit made on 2 February 2022

by Mr R Walker BA HONS DIPTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 March 2022

Appeal Ref: APP/W4515/W/21/3284055

The Quay Taphouse, 50 Bell Street, North Shields, Tyne and Wear NE30 1HF

- 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 Paul Sample (55 Quay Limited) against the decision of North Tyneside Council.
 - The application Ref 21/01029/FUL, dated 10 April 2021, was refused by notice dated 31 August 2021.
 - The development proposed is the proposed use of part of the parking area opposite The Quay Taphouse, River Cafe and Dodgins Yard, to be used as additional external seating for customers of these businesses. External seating is to provide socially distanced amenity space and will feature a roadside barrier and waiter/waitress table services.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The seating area operated during the summer months of 2021. However, the proposed plans have not been fully implemented, such as the proposed screen hedging. In this regard, I am dealing with the appeal in part retrospectively.
3. There are differences between the seating capacity within the proposed layout plan and what is installed on site and the capacity outlined in the supporting statements. Both parties confirmed that the maximum capacity proposed is 100 people. This is the basis by which the Council determined the application, and I am therefore satisfied that no party would be prejudiced by my determination on this same basis.

Main Issue

4. The main issue is the effect of the development on the living conditions of the occupiers of nearby residential properties with particular reference to noise and disturbance.

Reasons

5. The Council's concerns relate to the effects on residents at the Waterfront Apartments and No 50D, 51, 51A, 52A and 52B Bell Street (the street). These lie on the other side of the street to the seating. This area includes, amongst other things, residential apartments, shops, restaurants and drinking establishments and facilities associated with the fisheries industry. This

combination of uses results in a vibrant character and the area is a popular destination, particularly in the summer months.

6. Although not an explicit requirement of any of the Council's policies, it has referred to the World Health Organisation's (WHO's) guidelines for acceptable noise environments. This suggests that serious annoyance would be caused if noise levels experienced outside a dwelling exceed 55db(A) during the daytime with a moderate annoyance experienced at 50db(A). However, the appellant considers that ambient noise levels are above 59dB(A) irrespective of noise emanating from the seating area.
7. Residents will be subject to varying degrees of noise with or without the development. During warm weather, residents would need to balance the effects from existing noise against the benefits of significantly improved ventilation. As such, this is a noise sensitive environment where the potential for, and the effect of, any additional noise must be carefully considered.
8. The Planning Practice Guidance (PPG) states, amongst other things, that the subjective nature of noise means that there is not a simple relationship between noise levels and the impact on those affected. Moreover, the main parties informed me that there is not a recognised method of assessment for assessing raised voices.
9. The appellant's desktop model shows a slight exceedance of the BS8233 (BS) noise guideline levels internally within neighbouring properties with a partially open window. This indicates some intrusion into living conditions but not enough to be significant.
10. Noise would vary depending on the number of patrons and the nature of individuals or groups. Having regard to the sensitivity of the existing noise environment and the personal experiences in objections raised, I am not satisfied that a desktop model is an appropriate method of assessment in this instance.
11. The appellant also undertook an on-site noise survey. However, the seating area was not being used at capacity and rainfall may have affected customer numbers. As such, I am not satisfied that the survey accurately reflects the potential future use of the seating area at peak times as the country moves beyond the pandemic.
12. The appellant argues the noise generated would be no more than that from passing cars. However, noise from cars or passing pedestrians is fleeting, and the gaps between cars passing provide some relief. In contrast, the concentration of up to 100 people is very likely to be clearly heard, with windows open, in gaps between traffic or in combination with, and above, other sources of noise. Moreover, it is during warmer weather that both the outdoor seating area would be at its busiest and local residents would more likely open windows, creating a friction between the nearby residents and the seating area.
13. My reasoning in this regard is reinforced by observations at my inspection, when I noticed that a small group of children by the waterfront beyond the seating area, could be clearly heard above other sources of noise from within No 5 Waterfront Apartments when the living room patio door was set on a tilt position. This did not last long as the group moved on.

14. The appellant accepts that shouting and voice levels potentially rising up to 68dB(A) could occur during events such as the European Football Championship which was held during the summer when the seating area was in use. This would be significantly above the WHO's thresholds for a serious annoyance and suggests that raised voices or shouting are highly likely to be heard above ambient noise levels.
15. Such tournaments are infrequent. However, there are other events or occurrences whether it be a national or local event, an individual celebration or simply an exuberant group or individual, where instances of raised voices or shouting could occur. As such, those noise levels and accompanying disturbance for local residents would not necessarily be confined to national or international events and would be well in excess of the BS and WHO guidelines.
16. I conclude that the volume and characteristics of the noise, from up to 100 individuals sitting and socialising near residential properties, to be distinct from other common noise sources experienced locally. As this area already experiences high noise levels, even a small increase could result in a significantly harmful effect to nearby residents' living conditions.
17. The seating area will be used for dining, however, there is no substantive evidence that this will be its primary function. Moreover, although the appellant has suggested a noise management plan it is difficult to see how situations involving high-spirited customers could be adequately controlled due to the subjective nature of interpreting such incidents.
18. Although there are means of lowering the temperature internally during warm weather without opening windows, such as drawing curtains, it is not unreasonable for residents to expect to be able to open windows in warm weather without being subject to unreasonably high noise levels. Moreover, it is during these periods when the seating area would be at its busiest and, when doing so, the change in the acoustic character of the area resulting from the development would be of a level that could potentially lead to complaints of a statutory nuisance. I appreciate that restricting its hours of operation to 9pm would limit such disturbance. However, although most residents would not be trying to sleep during the hours of operation, I am mindful that young children or shift workers might be.
19. I acknowledge that, background noise levels in mixed commercial areas, such as this part of the street, are generally expected to be greater than those in residential only areas. However, every case must be judged on its own merits in relation to the size of the facility and the proximity and nature of the surrounding properties.
20. The impacts on local residents would be observable, and likely to cause small changes in behaviour, attitude or other physiological response. This would be within the Lowest Observed Effect Level set out in the Noise Policy Statement for England (2010). Recommended action is to mitigate and reduce impacts to a minimum. However, I have set out above that the proposed mitigation would be difficult to implement and unlikely to address the adverse effects of additional noise as experienced by local residents.
21. I therefore conclude that the development has the potential to have unacceptable effects on the living conditions of the occupiers of nearby residential properties with particular reference to noise and disturbance. I

therefore find conflict with the requirements of Policies S1.4 and DM5.19 of the North Tyneside Local Plan (2017) and paragraphs 174 and 185 of the National Planning Policy Framework (the Framework). These require, amongst other things, that proposals be acceptable in terms of their impact upon local amenity for new or existing residents and businesses, adjoining premises and land uses.

Other Matters

22. The Council has not raised concerns in relation to the effects of the development on the Fish Quay Conservation Area (CA). The seating area is functionally connected to existing uses, and it would have a lightweight form and appearance. As such, having regard to my statutory duties, I am satisfied that its use and appearance would not harm the character and appearance of the CA.
23. There is no substantive evidence that the development would reduce incidents of anti-social behaviour elsewhere within the area.

Planning Balance

24. The seating area offers improved facilities and there are benefits to visitors and residents from increased choice, contributing to the vibrancy of the fish quay. In this regard, the improvements to the food and drink offering accord with objectives within the draft masterplan for the area and I am mindful that the development has much local support. There are also economic benefits from increased trade, and I recognise that following the effects of the pandemic such benefits are valuable.
25. Overall, these are not considerations that, either individually or cumulatively, outweigh the harm that I have identified to the living conditions of the occupiers of neighbouring residential properties. I have come to this conclusion having regard to the importance that the government places on making efficient use of land, building a strong, competitive economy and promoting healthy and safe communities.

Conclusion

26. For the reasons given above, the development conflicts with the development plan and there are no material considerations that outweigh that conflict. Therefore, the appeal is dismissed.

Mr R Walker

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Paul Sample	55 Quay Limited
Maria Ferguson	Maria Ferguson Planning Ltd
Simon Urquhart	Wardell Armstrong LLP

FOR THE LOCAL PLANNING AUTHORITY:

Rebecca Andison	North Tyneside Council (Planning)
Claire Wilson	North Tyneside Council (Environmental Health)
Dave McCall	North Tyneside Council (Highways)

INTERESTED PERSONS:

Frank Lott	Local ward councillor
Keith Powell	5 Waterfront Apartments
Nik Hanlon	North Shields Fish Quay Company