



Appeal Decision

Hearing held on 22 March 2022

Site visit made on 22 March 2022

by R Morgan BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 April 2022

Appeal Ref: APP/N4720/W/21/3277358

The Briggate, 37 Main Street, Garforth, LEEDS, LS25 1DS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by JD Wetherspoon plc against the decision of Leeds City Council.
 - The application Ref 20/06363/FU, dated 4 October 2020, was refused by notice dated 21 December 2020.
 - The application sought planning permission for change of use of social club to public house (A4); internal and external alterations; creation of external beer garden and associated works, without complying with conditions attached to planning permission Ref 15/02492/FU, dated 5 August 2016.
 - The conditions in dispute are Nos. 4 and 8 which state that:
 - 4) *The external drinking areas shall be confined to the areas identified in Drwg. No.8257-205 Rev H (Planning Site Location) and the use of these areas (excluding the use of the smoking shelter for smoking purposes) shall be restricted up to 22:00hrs on any day.*
 - 8) *The hours of delivery to and from the premises including refuse collection shall be restricted to between 08:00-18:00 hours (Monday to Friday) and 10:00-16:00 hours on Saturdays with no deliveries or collections on Sundays and Bank Holidays.*
 - The reason given for both conditions is:
In the interests of residential amenity in accordance with saved UDP Review (2006) policy GP5 and the National Planning Policy Framework.
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Decision

1. The appeal is dismissed.

Main Issue

2. The effect of the proposed changes to conditions 4 and 8 of planning application ref 15/02492/FU would be to extend hours of opening for the front beer garden, and to allow deliveries to and from the site to take place an hour earlier, from 07:00. The main issue is the effect of the proposed changes on the living conditions of surrounding occupiers, having particular regard to noise and disturbance.

Procedural Matter

3. The Council's Noise and Vibration guidance has not been subject to formal consultation and its contents are contested by the appellant. I have therefore given it limited weight in this appeal.

Reasons

Condition 4 – Front beer garden opening times

4. Main Street is a busy suburban high street, with a range of commercial premises lining both sides of the road. Shops and other services are mostly limited to Main Street itself, with the surrounding area, including the streets to the rear, being predominately residential.
5. In the vicinity of the appeal site, the premises fronting onto Main Street are mostly two storey. Upper floors generally appear to be in commercial use, but there is a flat above the post office, just across the road from The Briggate, which is the nearest noise sensitive receptor (NSR) to the front beer garden. According to the Council, bedrooms are located at the front of the flat, with windows looking out onto Main Street. Residential properties on Lyndon Avenue and Coupland Road, which back onto the site, are further away, with a high acoustic fence around the rear beer garden providing noise mitigation.
6. The Briggate pub is set back from the main shopping frontages on Main Street, with outside seating areas to the front, side and rear. Condition 4 of planning permission 15/02492/FU limits use of these external seating areas to 22:00 on any day, in order to protect the living conditions of nearby residents. The proposed variation would allow the front beer garden to remain open until midnight. Other outdoor areas would still close at 22:00, with the exception of the smoking shelter at the side, which is not subject to any time restriction and can remain in use until the pub closes at 00:30 hours.
7. The parties disagree as to the appropriateness and robustness of the methodology used to assess the potential noise impact of the proposal. The appellant explained that the approach used has been developed over a number of years and has been used successfully elsewhere, but it was common ground that there is no established, peer reviewed methodology for assessing the impact of noise from beer gardens.
8. Tolerance of noise is subjective, and what may cause disturbance to one person may be acceptable to another. In assessing this appeal, it is therefore necessary to make an informed judgement based on the technical evidence provided, whilst also having regard to the site context; the likely nature of the noise and the degree to which it may cause disturbance to surrounding occupiers, particularly late at night when people are resting.
9. In order to assess the potential impact of the current proposal, two separate noise surveys were undertaken. Initial monitoring took place on Wednesday 28 November 2018 between 22:15 and 00:25, from a position at the back of the pavement on Main Street, adjacent to the entrance gate to the front beer garden. At this time, the beer garden had closed but the pub was still open, and so monitoring provided an indication of the existing ambient and background noise levels in this location without contribution from the beer garden.
10. The submitted noise assessment (DC1848-R2v3) explains that, during the survey time period, the noise environment was dominated by road traffic, including regular buses. The appellant's noise consultant explained at the hearing that the intermittent nature of traffic along Main Street largely accounted for the difference between the recorded ambient (L_{Aeq}) and the lower

background (L_{A90}) noise levels. At the hearing, the appellant confirmed that the results were what they would expect to see in this location, and corresponded with previous noise monitoring undertaken in 2015. Although data was collected for a single evening only, I have no reason to doubt that the findings were representative of the noise environment on a typical weekday evening.

11. Owing to the time of year, noise levels from the front beer garden were predicted, in lieu of direct measurements. The prediction was based on the front beer garden operating at full capacity (84 persons seated), and assumed that 1/3 of people were speaking at any one time, using raised voices. The noise assessment concluded that, even during peak use, noise from the front beer garden would be unlikely to cause an unacceptable impact on occupiers of the NSR on Main Street, which is already subject to noise from regular traffic throughout the evening.
12. The sound levels used in the prediction were based on research on typical noise from speech in a busy setting such as a beer garden, but did not cover louder noise such as shouting. The noise assessment notes that there may be short peak periods during which the noise impact may be higher, when additional mitigation measures may be required to bring noise levels back down to a normal level. Such excess noise, considered to be unreasonable behaviour, would need to be controlled by management measures, as set out in the Premises Management Plan. The conclusion that the noise impact would be acceptable therefore relies on any additional loud noise being swiftly and effectively dealt with by staff to ensure that disturbance was kept to a minimum.
13. Subsequent noise monitoring was undertaken over two evenings in June 2021 when the beer garden was operating. The aim of this survey was to determine the validity of the predicted model, and concluded that if anything, the original model had slightly overstated the noise levels generated by the beer garden. The appellant confirmed at the hearing that the weather was warm and that the beer garden was busy at the time of the survey, with no capacity restrictions in place. However, the noise survey was unattended, so no contextual data has been provided to back up or help explain the figures.
14. For security reasons, the sound level meter was positioned on top of the acoustic fence, so the measurements taken in June 2021 would have primarily measured noise from the rear beer garden rather than the front area. The appellant was unable to clarify how the capacity of the rear beer garden compared with that of the front beer garden. If the rear seating area is smaller, then even if it was at full capacity, the overall noise level is likely to be less than at the front. Questions therefore remain about the extent to which the additional monitoring can be relied upon to provide a reliable indication of likely noise from the front beer garden.
15. Whilst use of the rear beer garden would not be extended, the noise assessment did not specifically address the likely noise impacts on properties on Lyndon Avenue and Coupland Road. Properties immediately to the rear of the pub will be afforded some protection by the building itself and the acoustic fence, but I saw on my site visit that there is a direct line of sight from part of the front beer garden to upper floor windows at the rear of several properties

- along Lyndon Avenue, with no buildings or structures in between to attenuate noise.
16. Furthermore, although properties on Lyndon Avenue and Coupland Road are further away, they will be less affected by traffic noise along Main Street, which might otherwise mask noise from the front beer garden. Indeed, noise monitoring data from 2015, carried out as part of application 15/02492/FU, shows that ambient noise levels were lower in measurement locations 1 and 2, towards the rear of the site, compared with location 3 nearer to the front. Such lower ambient noise levels mean that occupiers of nearby properties on Lyndon Avenue and Coupland Road may be susceptible to disturbance from noise from the front beer garden.
 17. The pub is already open until 00:30, and there will already be a degree of noise associated with people leaving, including around the car park to the rear of Lyndon Avenue. Indeed, comments from local residents refer to existing disturbance late in the evening from noise from the beer garden and smoking shelter. The proposed extension of use of the front beer garden would result in further noise, and any unreasonable behaviour, which is more likely late at night when people have been drinking, has the potential to cause additional disturbance to nearby residents. This is particularly the case during the warmer months, when use of the beer garden is likely to be greatest at the same time as residents have windows open.
 18. The Premises Management Plan explains the actions that would be taken to minimise disturbance to local residents from excessive noise. The extent to which such interventions are likely to be needed cannot be predicted and may not be very common. However, such incidences may be more likely to occur later at night when people are inebriated. Prompt action by staff may limit disturbance to surrounding residents, but it seems likely that, by the time such measures are taken, some degree of disturbance will have already been experienced. The nature of such noise, which would be very different to traffic noise, has the potential to cause disturbance, particularly late at night when people are settling down to sleep.
 19. The benefits of the proposed extension to use of the front beer garden for the pub and its patrons need to be balanced against safeguarding the living conditions of surrounding residents. For occupants of the NSR, noise from the beer garden may be largely masked by traffic noise along Main Street, but for properties on Lyndon Avenue, where background and ambient noise levels will be lower, the impact is less clear. Furthermore, there would be reliance on management measures to keep noise levels within acceptable limits, the effectiveness of which is uncertain.
 20. Taking all of the above factors into account, I conclude that it has not been satisfactorily demonstrated that the proposed variation of condition 4 would safeguard living conditions for surrounding residents. The proposal therefore conflicts with the requirements to protect and avoid loss of amenity contained in Saved Policy GP5 of the Unitary Development Plan 2006 (ODP), and Policy P10 of the Core Strategy 2014. For similar reasons, there is conflict with the paragraph 130f) of the National Planning Policy Framework.

Condition 8 - Delivery hours

21. The proposed change to condition 8 of planning permission ref 15/02492/FU would allow deliveries to and from the site from the earlier time of 07:00 on Mondays to Fridays. No changes are proposed to deliveries times at weekends, or to refuse collection times.
22. The reason for the existing restriction on deliveries before 08:00 is to safeguard the living conditions of nearby residents. Although 07:00 is generally considered to be daytime when considering noise related impacts, the period between 07:00 and 08:00 is a sensitive time when people may be waking up, and I note the Council's comment that, in their experience, people are more likely to report that they are experiencing disturbance from noise at this time, compared with later during the morning. In this particular location, close to a pub which is open until late in the evening, there is also the potential for nearby residents to suffer from disturbance both at night and in the early morning, resulting in cumulative harm to periods of rest.
23. Main Street is a busy thoroughfare, and I could see when I visited the area during the afternoon, that parking was in demand, with many of the parking bays occupied. Space for parking is provided in demarcated bays along the Main Street shopping frontages, with double yellow lines restricting parking between the marked bays. Delivery vehicles serving The Briggate make use of the two parking bays at the front of the pub, but these spaces are also used by visitors and service vehicles to other shops and businesses along this section of the street. Delivery vehicles may have a specific time slot, but there is no guarantee that parking spaces outside of the pub will be available at any given time, particularly given the need to accommodate larger size vehicles.
24. As part of the appeal submissions, a short parking survey was undertaken. This was limited in extent, but showed that on the morning of the survey, there was greater availability of parking spaces prior to 07:30. This reflects the opening times of the nearby businesses, the majority of which do not open until 08:00 or later. Given the busy nature of the high street throughout the rest of the day, allowing deliveries from 07:00 would provide a greater chance of at least one of the parking bays outside the pub being available, and would be acceptable in terms of highway safety.
25. Main Street is a commercial street and the traffic survey shows that there is a reasonable flow of traffic in both directions from 07:00, including regular buses. The proposed change to delivery times would involve a maximum of one or two additional HGV movements per weekday during the period between 07:00 and 08:00, which is not excessive given the existing situation and would not result in undue additional disturbance to surrounding occupiers.
26. However, in addition to noise from vehicles, there will also be noise associated with deliveries themselves, which according to the Servicing Management Plan, can take up to half an hour. The appellant has provided little further information about what this involves, but I note comments from a local resident that they are regularly disturbed early in the morning by noise from beer kegs being moved in preparation for collection.
27. The appellant has drawn my attention to the recent grant of planning permission for a facility to store delivery cages ready for collection. This would be located to the side of the pub, adjacent to the passageway which connects

Main Street with the public car park to the rear. The location of the proposed cage, which at the time of my visit was being used for outside storage of beer kegs, is some distance from the NSR on Main Street but closer to the rear of properties on Lyndon Avenue. Residential properties at the rear of the site will be less affected by traffic noise on Main Street, so may be susceptible to disturbance from other loud and sudden sounds. However, information about the method of moving kegs and other materials between the delivery vehicle and the pub has not been provided, so it is difficult to assess how noisy this might be, and the potential effect on surrounding occupiers.

28. The noise survey carried out during 2015 recorded higher ambient noise levels during the period 07:00-08:00 than 08:00-09:00 at measuring location 1. This somewhat unexpected result was attributed to lower number of vehicles, meaning traffic was more free flowing. Noise surveys were only carried out on one day, so whether this situation is representative of a typical weekday morning is uncertain. Indeed, noise recordings from the top of the rear acoustic fence on 11 June 2021 appear to show lower ambient and background noise levels during the hour starting 07:00 than during the hour starting 08:00. The possibility of higher noise levels earlier in the morning does not, therefore, provide a compelling justification to alter delivery times as proposed, particularly when considering the potential impact on properties along Lyndon Avenue.
29. I appreciate the difficulties which delivery drivers may face in finding a parking space after 08:00, but comments from residents suggest that they are already being disturbed as a result of noise associated with deliveries. In the absence of any further assessment of the specific noise associated with deliveries, I am unable to conclude that the proposed change to delivery hours would not cause undue disturbance at a sensitive time in the morning.
30. I conclude that insufficient information has been provided to demonstrate that the proposed variation to condition 8 would provide satisfactory living conditions for neighbouring residents, having particular regard to noise and disturbance. The proposal conflicts with the requirements to protect and avoid loss of amenity contained in both saved UDP Policy GP5 and Core Strategy Policy P10.

Conclusion

31. For the reasons set out above, the proposal would not comply with the development plan and no other material considerations outweigh this finding. The appeal is therefore dismissed.

R Morgan

INSPECTOR