
Appeal Decision

Site visit made on 15 March 2022

by C McDonagh BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 April 2022

Appeal Ref: APP/E2001/W/21/3284924
30A West End, South Cave HU15 2EY

- 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 Fiona Neve against the decision of East Riding of Yorkshire Council.
 - The application Ref 21/01692/PLF, dated 28 April 2021, was refused by notice dated 21 September 2021.
 - The development proposed is a change of use of land to outdoor seating for existing cafe (retrospective).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. In the banner heading above, I have taken the description of development from the Council's decision notice rather than the planning application form as this more accurately and concisely describes the appeal proposal.

Main Issue

3. The main issue is the effect of the proposal on the living conditions of occupiers of adjacent properties with regards to noise and disturbance.

Reasons

4. The appeal site comprises the rear garden area of an end-terrace property, the ground floor of which is currently in use as a café. There are dwellings to either side and gardens to the rear, while there are external seats to the front of the café on the footpath. The area is predominantly residential in character.
5. I understand that the garden area subject to appeal was used to accommodate customers of the café during the COVID-19 pandemic when serving indoors was not possible. Although this use ceased in May 2021, the seating has remained. The rear area is accessed through the café.
6. The external seating area adjoins the garden of No's 28 and 30 West End, while there is a flat above the café at 30A. Regardless of whether any properties are owned by the appellant, I must consider the living conditions of existing and future occupiers. The seating area can accommodate 20 covers, although the appellant would prefer to limit this to 16. Be that as it may, this would be able to accommodate a significant number of people. Although I understand

smoking is not permitted and the premises does not have either music or alcohol licences, conversations and general activity from comings and goings would generate a considerable amount of noise. This would be likely to carry into neighbouring gardens and properties, despite the presence of fences. This is of particular concern during warmer weather when windows would be open and gardens would be in use, and the external seating area would be most welcoming for customers. While I appreciate this would be during the day, with opening hours of 10:00-16:00/17:00 proposed, this would nevertheless cause harm to the living conditions of occupiers of nearby dwellings through increased noise and disturbance.

7. I understand the café has previously been granted a licence to serve customers to the front on the footpath. However, this procedure is considered under different protocols and controls to a planning application. Moreover, there are no gardens to the front of the property, while there would already be a certain level of noise from passing traffic and pedestrians. The supposedly more elderly age of the appellant's customer does not factor into my decision, nor could I rely on this to ensure living conditions of neighbours are not harmed in this manner.
8. I appreciate that the appellant is trying to run a business during testing economic conditions, particular during the ongoing pandemic. I also understand that the increase in customer numbers would be of benefit to them, and I attribute positive weight to this consideration. However, a balance must be struck, and I must weigh this economic benefit against the more widespread harm to the living conditions of occupiers of neighbouring dwellings. Despite agreeing to more onerous conditions to attempt to control noise and disturbance, this harm carries considerable weight against the proposal.
9. Based on the above, the proposal would harm the living conditions of occupiers of adjacent properties. This would be contrary to Policies ENV1 and ENV6 of the East Riding Local Plan 2012 – 2029 Strategy Document (Adopted April 2016). These seek to ensure, among other things, that development has regard to the amenity of existing or proposed properties. The proposal would also be contrary to the National Planning Policy Framework, which advises through paragraph 130 that development proposals should ensure a high standard of amenity for existing and future users.

Other Matters

10. My attention is drawn to a bar and grill approved by the Council in the same village. Although it is claimed this is closer to dwellings, serves alcohol and opens later than the appeal site, I have no information on this development before me to substantiate this. In any event, the proposal must be assessed on its own merits. As such, I have not considered this matter further.
11. Although the appellant has expressed concern regarding the handling of the application by the Council, including the procedures at the committee meeting, I have had regard only to the planning merits of the proposal. Subsequent complaints should be made to the Council, which will have its own procedures for complaints.

Conclusion

12. The proposal would harm the living conditions of occupiers of adjoining and adjacent dwellings through increased noise and disturbance. As such it would conflict with the development plan taken as a whole. There are no material considerations that indicate the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, I conclude that the appeal should be dismissed.

C McDonagh

INSPECTOR