



Appeal Decision

Site visit made on 7 February 2022

by M Ollerenshaw BSc (Hons) MTPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 April 2022

Appeal Ref: APP/M4320/W/21/3283843

42 Station Road, Ainsdale PR8 3HW

- 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 Ken Tilley against the decision of Sefton Metropolitan Borough Council.
 - The application Ref DC/2021/00696, dated 12 March 2021, was refused by notice dated 23 July 2021.
 - The development proposed is described on the application form as 'erection of canopy, outdoor seating with planter demarcation'.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of canopy, outdoor seating with planter demarcation at 42 Station Road, Ainsdale PR8 3HW in accordance with the terms of the application, Ref DC/2021/00696, dated 12 March 2021, and subject to the conditions below.

Applications for costs

2. An application for costs was made by Mr Ken Tilley against Sefton Metropolitan Borough Council which is the subject of a separate decision.

Preliminary Matters

3. The development proposed has already been carried out. I have therefore dealt with the appeal scheme as seeking retrospective planning permission.

Main Issues

4. The main issues are the effect of the development on the character and appearance of the area, and the effect on the living conditions of the neighbouring occupiers, with particular regard to noise and disturbance.

Reasons

Character and appearance

5. 42 Station Road is a two storey building which is currently used as a drinking establishment. It is located in a short parade of commercial premises on the corner of Station Road and Fairfield Road within a designated Local Centre. The appeal site includes areas of the pavement to the front and side of the premises, where an associated external seating area has been created and is already in use.

6. Station Road is the main commercial road running through Ainsdale. The surrounding area is of mixed character with a variety of building sizes and styles, including two storey detached, semi-detached and terraced properties. There are a range of different uses nearby, including residential, retail premises, restaurants, cafes and bars. Most properties are set back from the highway with small front gardens behind low boundary walls and hedges. This creates a characteristic sense of openness which in combination with the mature street trees contributes positively to a spacious and verdant character.
7. The proposal relates to an extension to the external seating area with associated glazed screens and planters, and a timber canopy to the side of the building facing Fairfield Road. The premises already benefits from planning permission for an external seating area to the front and side of the building, and the extension to that area is to the Fairfield Road side. The canopy is formed by a timber frame bounded by screens and planters and is covered by a laminated glazed roof.
8. The pavements around the front and side of the building are relatively wide such that the extended external seating area sits comfortably around the building, leaving sufficient width to the remaining pavement to allow pedestrians to pass along it. While the screens, planters and canopy create a sense of enclosure around the building, these do not appear at odds with the prevailing character of the area as described above, where the frontages of properties are generally enclosed by low boundary treatments adjacent to the footway. Due to the generous width of the pavements here, the proposal does not unduly impinge on the sense of openness.
9. Whilst the canopy appears to be the only structure of its type in the immediate locality, its modest height together with its position to the side of the building and lightweight appearance means that it is not unduly prominent. The design of the canopy, screens and planters reflect the building in terms of materials and colour scheme, and consequently do not detract from the appearance of the property or the surrounding area.
10. For the above reasons, I conclude that the development does not have a harmful impact on the character and appearance of the area. Accordingly, there is no conflict with Policy EQ2 of A Local Plan for Sefton (2017) (Local Plan), which, amongst other things, seeks to ensure that development responds positively to the character, local distinctiveness and form of its surroundings.

Living conditions of neighbouring occupiers

11. There are a number of residential properties located close to the appeal site, including those on the same and opposite sides of Station Road and also to the rear (north) and eastern side of Fairfield Road. During my site visit I observed that Station Road is a busy highway which includes a number of restaurants, bars and retail premises which are open at night. As such, a degree of noise from traffic and from the patrons of other premises nearby would be expected in this area later into the evening.
12. The external seating area as previously approved allows for up to 40 covers which could be used for serving food and drink, without the need for further permissions. The submitted plan indicates that with the addition of the extended seating area, which relates principally to that area to the side of the

building, there would be a total of about 68 covers. The seating area is proposed to be used up until 22:00 hrs, as with the approved seating area. The addition of the canopy and the more permanent nature of the extended seating area means that it is a more attractive outside space for customers to use, which has led to concerns about additional noise and disturbance to nearby residents, particularly in the evening and during warmer weather. In this regard, I have taken careful account of the representations of those nearby.

13. The extended seating area is partly contained by the laminated glazed covering, screens and planters to the canopy which is likely in my view to reduce noise to some extent. Moreover, I note that the Council's Environmental Health Officer did not raise any objections to the proposal on grounds of noise and disturbance. The appellant states that no complaints have been made to the Environmental Health Department regarding this property, which is not refuted by the Council.
14. In support of the appeal, the appellant has submitted a Noise Impact Assessment (NIA) to identify and comment on the potential noise impacts arising from the use of the external seating area. The NIA included noise measurements taken during a Friday evening. Noise levels were measured from public footpaths immediately outside two locations representative of the nearest dwellings on Station Road and Fairfield Road.
15. At the time of the noise survey the external seating area was not at full capacity with occupation levels of around 10-20 per cent. The noise measurements were also paused for reasons beyond the control of the surveyors. However, the NIA also includes computerised noise modelling and concludes that noise from worse case use of the extended seating area is not significantly different outside the most exposed dwellings to that associated with the approved seating area. It also finds that the noise from the external seating area is well within the existing residual noise climate of the area.
16. That reflects my own observations during a site visit at around 11:00 hrs on a Monday morning, when noise from customers using the seating area was not readily audible from various points along both Station Road and Fairfield Road. Therefore, although the noise survey and my own observations are only snapshots in time, from the evidence before me I have no good reason to doubt the conclusion of the NIA that the noise impacts from the extended seating area are not a significant contributor to the overall noise levels in the area.
17. Measures to manage the operation of the extended seating area, such as limiting the playing of music/amplified sound and the hours during which it may be used, can be controlled by condition to mitigate any potential negative impacts on local residents.
18. For the above reasons, I conclude that the proposal is unlikely to result in any significant increase in noise and disturbance to an extent that would unacceptably affect the living conditions of nearby residents. In this respect, there is no conflict with Policies EQ4 and EQ10 of the Local Plan, where these seek to protect the amenity of neighbouring properties, including in respect of noise.

Other Matters

19. The appellant has submitted a draft unilateral undertaking with the appeal, the purpose of which is to secure firstly, a Traffic Regulation Order (TRO) to implement double yellow lines along part of Fairfield Road to deter customers from parking here whilst visiting the premises, which can obstruct pedestrians, as shown in Plan 1-Annex 1 of the draft unilateral undertaking; and secondly, a Stopping Up Order (SUO) for that part of the public highway which is obstructed by the development, as detailed in Plan 2-Annex 2. On the basis of the evidence before me, I am satisfied that such orders are necessary in the long term for the safe and efficient operation of the highway network and pedestrian routes, however in the short term the implications of their absence are not so significant to justify withholding permission.
20. The copy of the undertaking before me has not been executed, being both undated and unsigned. The Planning Practice Guidance (PPG) sets out that 'Grampian conditions', i.e. conditions which prevent development from occurring until a specific action has been taken, may be imposed under certain circumstances. It establishes that Grampian conditions should not be used where there are 'no prospects at all of the action in question being performed within the time-limit imposed by the permission'¹.
21. Given the appellant's willingness to enter into an agreement, as evidenced by their submission of a draft unilateral undertaking, and in view of the Council's no in principle objection to it, it is highly likely that the TRO and SUO could be secured in practice. I am therefore satisfied that a condition to secure the TRO and SUO is necessary to make the development acceptable in planning terms.

Conditions

22. I have had regard to the conditions suggested by the Council in their statement. As the development has already taken place, a condition relating to the standard implementation period is unnecessary. I have however, for clarity and enforceability, set out the approved plans.
23. A condition specifying the hours of use and a further condition preventing the playing of live or amplified music, insofar as it relates to the external seating area only, are necessary to protect the living conditions of neighbouring occupiers.
24. Following my reasoning in paragraphs 19 to 21 above, I have also imposed a condition requiring the appellant to enter into an agreement with the Council to secure the necessary TRO and SUO in the interests of highway and pedestrian safety.
25. In imposing conditions, I have had regard to the relevant tests in the National Planning Policy Framework, PPG and of statute. In that context I have modified the wording of some of the conditions proposed by the Council without altering their fundamental aims.

Conclusion

26. For the above reasons, having considered the development plan as a whole, the approach in the National Planning Policy Framework, and all other relevant

¹ Paragraph: 009 Reference ID: 21a-009-20140306

material considerations, the appeal is allowed subject to the conditions specified below.

M Ollerenshaw

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be in accordance with the following approved plans: Location Plan and drawing nos 0207896-G01, 0207896-G02 and 0207896-G03.
- 2) The external seating area hereby permitted shall not be used by customers outside the hours of 09:00 and 22:00 on any day.
- 3) No amplified or other music shall be played in the external seating area hereby permitted at any time.
- 4) Within three months of the date of this decision a scheme securing the implementation of a Traffic Regulation Order (TRO) to secure the implementation of double yellow lines along the part of Fairfield Road as shown by the black line on Plan 1-Annex 1 of the unilateral undertaking supporting this appeal, and a Stopping Up Order (SUO) for that part of Fairfield Road shown within black hatching in Plan 2-Annex 2 of the same, shall have been submitted to and agreed in writing by the local planning authority. The agreed scheme shall contain a timetable for its implementation, which shall be adhered to. If, within a period of a year from the date of this decision, either TRO or SUO is not made, the use of the outdoor seating area hereby approved shall permanently cease.