



Appeal Decision

Site visit made on 22 February 2022

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 19th April 2022

Appeal Ref: APP/W0734/W/21/3288014

Spensley's Emporium, 1 Albert Road, Middlesbrough TS1 1PQ

- 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 Stephen Spensley against the decision of Middlesbrough Borough Council.
 - The application Ref 21/0367/FUL, dated 13 May 2021, was refused by notice dated 12 October 2021.
 - The development proposed is described as 'The erection of a steel framed, timber decked external drinking and smoking terrace over an existing rear yard and outbuildings. The terrace will be accessed from an existing external fire escape stair that runs between an existing first floor fire escape and ground floor yard. The Terrace will have a modern timber screen facing Brunswick Street for visual amenity and the terrace and screens will not connect to the existing listed building other than columns which will interface with roofs and internal or yard floors and existing structure'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The property at 1 Albert Road is a grade II listed building. Listed building consent has previously been granted for the development that is the subject of the appeal under ref: 21/0368/LBC.

Main Issue

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

Reasons

4. The appeal site is at the back of a bar and night club premises located in the city centre. The development would create new terracing above the rear yard which would accommodate a maximum of 48 patrons between 11pm and 3am each evening.
5. In terms of noise and disturbance, the Council's objection relates primarily to the adjacent Pullman House, a complex of self-contained dwelling units adjacent to the appeal site. The rear elevation of Pullman House looks on to Brunswick Street, a narrow lane that runs along the back of the properties. It also faces the A66, a busy dual carriageway.

6. At the time of the change of use of Pullman House to its current use, mitigation measures were put in place for the lifetime of the development to manage the impact of external noise on the residents, including sound insulation and preventing the opening of the rear windows. I note that there was no external use at the rear of No 1 when the measures were put in place.
7. In response to the Council's concerns, the appellant has produced a Noise Impact Assessment (NIA) undertaken by Apex Acoustics and dated 7 July 2021. The assessment was carried out on the basis that noise breakout to all habitable rooms would be restricted to NR 20¹, in line with comments from the Council's Environmental Protection Team (EPT).
8. The assessment concluded that the noise levels arising from the proposed use of the new terrace would achieve the stated internal noise criteria at Pullman House. The same conclusion was reached for the residences at Webb House, which is further to the west from the appeal site.
9. Whilst I take into account the lack of objection from the EPT following the submission of the NIA, a number of issues arise. The NIA appears to be a desk-based assessment based on theoretical factors. Appendix C indicates that daytime figures have been used for the calculations, and does not indicate why night-time figures have not been used for a use that will occur at night. It is not clear where the external free-field noise figures have derived from, or whether the actual background noise levels that are already experienced at Pullman House have been accounted for during the proposed hours of operation.
10. There is little evidence that the physical characteristics of the buildings have been considered within the scope of the NIA. For example, although the terrace would be set back from the line of the rear elevation of Pullman House, where the back windows are located, there could be potential for noise transference or vibration through the side wall arising from the development.
11. Another possible source of noise might be from music within the main building. Although no music would be played on the terrace, there is a clear potential for music noise to leak from inside when the door on to the terrace was open due to comings and goings of patrons. It is likely that these comings and goings would be regular, if not continuous, during the hours of use. However, this matter is not addressed in the NIA, which only refers to music breakout from other existing elevations.
12. It is also reasonable to question whether or not the proposed limit of 48 persons on the terrace could effectively be enforced. No information is available on how this number could be adhered to in practice.
13. Taking these factors into account, I am not convinced that the NIA adequately reflects the true noise levels that would be experienced at Pullman House whilst the terrace was in use.
14. The character of the potential noise is also of concern. The noise from customers drinking into the early hours could be highly variable, unpredictable, and intrusive. It would have a significantly different character to, for example, traffic noise, which is more monotonous and somewhat easier to ignore. By

¹ NR standing for Noise Rating

contrast, occasionally very loud, erratic noise from customers would therefore have the potential to cause significant disturbance to nearby receptors.

15. Finally, I have borne in mind the characteristics of the neighbouring residents in this specific case. Although the available information is limited, they are described as being vulnerable with complex needs. It may be that due to their circumstances, they have less control as to whether or not they can choose to live next to the nightclub.
16. In general, city centre residents may be expected to be more tolerant of noise from entertainment venues. However, the stated situation of the Pullman House residents leads me to the view that they might be less tolerant of disturbance, and therefore disproportionately affected by the potential noise from the development, and this adds to my concerns.
17. Drawing these threads together, I conclude that it has not convincingly been demonstrated that the development would have an acceptable impact on the living conditions of nearby residents. Conflict thus arises with CS Policy DC1, insofar as it requires the effect upon the surrounding environment and amenities of occupiers of nearby properties to be minimal both during and after completion.

Other Matters

18. The appeal site lies in the Historic Quarter and Station Conservation Area (CA), and so I am required to have special regard to the desirability of preserving or enhancing the character or appearance of the CA. From the evidence before me, I am satisfied that the proposal would preserve the character and appearance of the CA, and so this duty is satisfied.

Conclusion

19. For the reasons above, the proposal would be contrary to the development plan as a whole, and so the appeal is dismissed.

Elaine Gray

INSPECTOR