



Appeal Decisions

Site visit made on 26 April 2022

by E Worthington BA (Hons) MTP MUED MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 May 2022

Appeal A: APP/Z4718/W/21/3285168

Smiths Arms, 1 Town Gate, Highburton, Huddersfield, HD8 0QP

- 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 Tony Reynolds, Loca Shading Designs Ltd. against the decision of Kirklees Council.
 - The application Ref 2021/62/91724/E, dated 26 April 2021, was refused by notice dated 27 July 2021.
 - The development proposed is described as 'deck with three giant umbrellas to rear of premises'.
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Appeal B: APP/Z4718/Y/21/3285173

Smiths Arms, 1 Town Gate, Highburton, Huddersfield, HD8 0QP

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
 - The appeal is made by Mr Tony Reynolds, Loca Shading Designs Ltd. against the decision of Kirklees Council.
 - The application Ref 2021/65/91725/E, dated 26 April 2021, was refused by notice dated 27 July 2021.
 - The works proposed are described as 'deck with three giant umbrellas to rear of premises'.
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Decisions

Appeal A

1. The appeal is allowed and planning permission is granted for 'deck with three giant umbrellas to rear of premises', at Smiths Arms, 1 Town Gate, Highburton, Huddersfield, HD8 0QP in accordance with the terms of the application, Ref 2021/62/91724/E, dated 26 April 2021, subject to the conditions set out in Annex A.

Appeal B

2. The appeal is allowed and listed building consent is granted for 'deck with three giant umbrellas to rear of premises', at Smiths Arms, 1 Town Gate, Highburton, Huddersfield, HD8 0QP in accordance with the terms of the application, Ref 2021/65/91725/E, dated 26 April 2021, subject to the conditions set out in Annex A.

Procedural Matter

3. Since the proposal is in a conservation area and relates to a listed building, I have had special regard to sections 16(2), 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).
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Main Issues

4. The main issues for both Appeal A and Appeal B are whether the proposal would preserve a grade II listed building, Smiths Arms Public House, Far Dean (Ref: 1313296) and any of the features of special architectural or historic interest that it possesses; and whether it would preserve or enhance the character or appearance of the Highburton Conservation Area.
5. A second main issue for Appeal A, is the effect of the proposal on the living conditions of nearby residents, with particular reference to noise and disturbance.

Reasons

The listed building and the Conservation Area

6. The appeal building is a two storey detached public house which dates to 1669 and is Grade II listed. It is finished in white render and positioned side on to the road with a car park to the rear. It has a 19th century wing to the west, and a 20th century extension to the north. Despite these later additions, the building remains an attractive example of a rural 17th century public house and retains much of its historic fabric, simple proportions, traditional features and openings.
7. Given the above, I find the special interest of the listed building, insofar as it relates to these appeals, to comprise its distinctive historic architectural design as a rural public house, along with its historic fabric and architectural features which are commensurate with its functional role and charm as a countryside pub.
8. The appeal property is also within the Highburton Conservation Area which covers much of the village and its semi-rural setting. The village itself is characterised by closely packed buildings and sits in an elevated position in the landscape surrounded by farmland. The appeal building is prominent at the summit of Far Dene with its flank elevation situated right up to the pavement edge. As one of the oldest buildings in the village it adds to the architectural richness of the conservation area and tells of the important role of public houses in rural settlements.
9. As such, insofar as relating to these appeals, I consider that the significance of the conservation area is mainly derived from Highburton's history and development as an attractive rural village and the historic status, role and importance of the buildings which it includes. Thus, the appeal building contributes positively to the character and appearance of the conservation area and its significance as a heritage asset in relation to these appeals.

The effect of the proposal on heritage assets

10. The proposal would see the replacement of a large double width window in the rear northern elevation of the building with a new door. A raised timber decking area some 12 metres by 11.6 metres with a glazed balustrade would also be provided immediately to the rear of the building. This would be covered by three large freestanding fabric umbrellas/canopies with aluminium frames. Whilst the Council raises no objections to the deck or the umbrellas in terms of their effect on heritage assets, it is concerned about the loss of the window and its replacement with a door.

11. The new door would be located on the building's late 19th century extension to its western side. As such it would not result in the loss of any historic fabric of the main 17th century part of the building. It would be the same width and height as the existing window, and in practical terms given the size of the existing opening, would result in the loss of only a limited amount of building fabric below it. It would incorporate timber framed glazed double doors in the same general arrangement as the existing window, and would be consistent with the other openings in this part of the building. Given its siting to the rear of the building, it would not be seen from Far Dene and would be mainly visible only in views taken from the pub car park.
12. Taking all these factors into account, and in light of the proposed door's siting and limited scale, I am not persuaded that it would lead to any harmful loss of the building's historic fabric, or that its visual impact would be detrimental. In my view the proposed new door would be a sympathetic addition that would be in-keeping with the continued functional role of the building as a public house. It would not erode the charm of the building as a traditional countryside pub or undermine the ability to appreciate it as such.
13. Whilst not of concern to the Council I have also considered the effect of the deck and umbrellas on the listed building. Given their relatively limited scale and height, close relationship with the rear of the building, and use of sympathetic materials, I find these to be relatively low key and appropriate additions which would not be prominent or dominating in relation to the host building.
14. Thus, overall I am content that the distinctive historic architectural design, historic fabric and features of the listed building, would not be diminished as a result of the appeal scheme. I therefore conclude that the proposal would preserve the special interest of the listed building. For the same reasons, I am also satisfied that the proposal would preserve or enhance the character or appearance of the Highburton Conservation Area.
15. This being so, the proposal would be consistent with the Act and would accord with Policy LP24 of the Kirklees Local Plan (Local Plan) which seeks to ensure that proposals promote good design, and Local Plan Policy LP35 which states that proposals affecting designated heritage assets should preserve or enhance the significance of the asset. Accordingly, the proposal would confirm with the development plan when taken as a whole. It would also align with the provisions of the National Planning Policy Framework (the Framework) which seek to conserve and enhance the historic environment.

Living conditions

16. There are a number of residential properties nearby. Notably neighbouring 39 Far Dene to the west adjoins the appeal site directly on the boundary adjacent to the pub car park/driveway. 5a and 5b Towngate to the north are at a lower level some distance from the appeal building, and 1a and 1b Towngate to the east are separated from the appeal site by substantial boundary planting and their own access drive.
17. I accept that the proposal would lead to customers eating and drinking outdoors and so has the potential to lead to noise and disturbance. However, I am mindful that the pub already has existing outdoor seating areas. Whilst outdoor seating is currently provided in a marquee in the car park, I

understand that the area to the rear of the pub was utilised for tables prior to its erection in response to the Covid 19 pandemic. I also saw at my visit that there are additional tables and chairs to the eastern side of the building. I have seen nothing to suggest that the use of these outdoor areas by customers is restricted in any way. As such, I am conscious that local residents are already likely to experience some noise and disturbance from the existing operation of the pub, irrespective of the appeal proposal.

18. To facilitate the proposal, the marquee would be removed and that part of the car park would revert to parking spaces. As such, whilst appreciating that the proposed deck would provide outdoor seating in an upgraded area that may be more attractive to customers than the existing arrangements, I have seen nothing to suggest that it would significantly increase the amount of outdoor seating that would be available, or the number of customers that would be likely to be outside the pub at any given time.
19. In this overall context, I am not convinced that any undue increase in noise and disturbance over and above that which would arise from the current operation of the pub, would be likely to occur as a result of the appeal proposal. I am also conscious that in contrast to the existing marquee which is at the northern end of the car park, the proposed deck would be located immediately to the rear of the building. Thus, it would restrict outdoor seating to the area closest to the building and bring it further away from the neighbouring residential properties to the north.
20. In coming to this view I have had regard to the historic instances of noise and disturbance referred to by local residents. The appellant accepts that disruption occurred during the period of the Covid 19 pandemic and its associated restrictions and it is clear that these exacerbated issues of noise and disturbance at the appeal site. However, these instances relate to the historic and existing operation of the pub and are not in themselves reasons to resist the appeal scheme in the circumstances described.
21. The Council's Environmental Health Officer raises no objections to the proposal provided a Noise Assessment Report is submitted. This is required to assess existing and proposed noise levels and to identify and provide attenuation and protection measures to the occupiers of any nearby noise sensitive premises as necessary. This could be the subject of a planning condition. Recognising that the use of a deck attached to the rear of the building could differ from the use of the pub's existing outdoor areas, such a report could be used to assess and control such things as the use of an amplified PA system/loudspeaker and the playing of music associated with the use of the deck. It would allow the control and mitigation of such factors in light of the formalisation of the outdoor seating arrangements as sought.
22. The use of the deck later into the evening (past 22.00 hours) and at potentially more unsociable times could also be restricted via a planning condition. In light of the proximity of nearby residential properties and the issues experienced in terms of noise and disturbance in the past, I consider that this is required notwithstanding the need for and implementation of any identified mitigation measures arising from the Noise Assessment Report.
23. Subject to the imposition of these suggested conditions, I am also content that the proposal would not lead to any undue increase in noise and disturbance that would harm the quality of life and well-being of neighbouring occupants.

24. I therefore conclude on this main issue that the proposal under Appeal A would not be harmful to the living conditions of nearby residents, with particular reference to noise and disturbance. There would thus be no conflict with Local Plan Policy LP24 (c) which states that proposals should promote good design by, amongst other things, minimising impact on the residential amenity of future and neighbouring occupiers.
25. The proposal would accord with Local Plan Policy LP52 which states that proposals which have the potential to increase pollution from noise (amongst other things) must be accompanied by evidence to show that the impacts have been evaluated and measures have been incorporated to prevent or reduce pollution to ensure it does not reduce the quality of life and well-being of people to an unacceptable level. Furthermore the proposal would support paragraph 130 of the Framework which seeks to ensure that development has a high standard of amenity for existing and future users.

Other Matters

26. Local residents are concerned about highway safety and in particular car parking and congestion on the nearby streets including the blocking of driveways and the pavement. As set out above, a marquee providing outdoor seating is currently located in the pub's car park. It takes up a good deal of the car park and as a result the number of spaces available for parking vehicles there has been reduced. Local residents refer to a number of instances of highway safety issues arising as a result of this situation.
27. That said, the proposal would see the removal of the marquee and the marking out of 11 car parking spaces in the car park. This would be 2 less than was the case prior to the erection of the marquee, but 7 more than is currently the case (with the marquee in place). On this basis (and subject to a condition to ensure the spaces are laid out and retained) there are no objections from the Council's Highways Development Management Team who is satisfied that the proposed on site car parking provision would be adequate to accommodate the number of trips expected to be generated by a pub of the appeal property's size under normal operating conditions. This being so, I am also content that the proposal would be unlikely to lead to any harmful increases in on-street car parking to the extent that highway safety would be compromised.
28. Local residents also refer to a loss of privacy, however given the site's relationship with its neighbours and boundary treatments as described above, along with the limited height of the proposed deck (0.6 metres) I am not persuaded that the proposal would lead to any increased overlooking of neighbouring properties or any harmful loss of privacy.
29. Additionally local residents are concerned about the use of the appeal property's rear garden area which is at the northern end of the car park. This is shown on the submitted plans as grass and shrubs and its use for outdoor seating does not form part of the proposal before me. I am also aware of concerns regarding anti-social behaviour at the appeal site, but have seen no substantiated evidence to demonstrate that such instances would be likely to increase as a result of the appeal scheme. Thus, it seems to me that the concerns described in these regards relate to the established operation of the pub rather than to the appeal scheme per se.

30. The proposal would formalise and improve the outside seating arrangements at the pub and thereby enhance the existing business. These are benefits of the proposal which count in its favour.

Conclusion and Conditions

31. For the above reasons, and taking all other matters raised into consideration, I conclude that both appeals should be allowed.
32. The Council has suggested a number of conditions which I have considered in light of the advice in the Framework which establishes that conditions should only be imposed where they are necessary, relevant to planning and to the development (or works) to be permitted, enforceable, precise and reasonable in all other respects.
33. I have imposed the standard time limit conditions in the interests of clarity. A condition is required in respect of Appeal A to specify the approved plans in the interests of certainty. Such a condition is not needed in respect of Appeal B since the formal decision above requires the works to be in accordance with the submitted plans.
34. With regard to Appeal A, a condition requiring a Noise Assessment Report is necessary in the interests of the living conditions of nearby residents, as is a condition to preclude the use of the deck after 22.00 hours in the evening. I have also imposed a condition requiring the laying out and retention of the approved car parking spaces in the interests of highway safety.

E Worthington

INSPECTOR

Annex A

Appeal A: APP/Z4718/W/21/3285168

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 27600 Existing Elevations, 27601-1 Proposed Elevations, and Car Parking Plan Proposed 27605.
- 3) No development shall take place until a Noise Assessment Report has been submitted to and approved in writing by the Local Planning Authority. The report shall include:
 - a) an assessment of all of the noise emissions from the proposed development;
 - b) details of existing background and predicted future noise levels at the boundary of noise sensitive premises or specified properties either on plan or by address; and
 - c) a written scheme of how the occupants of the above-mentioned noise sensitive premises will be protected from noise from the proposed development including details of all necessary noise attenuation.

Development shall be carried out in accordance with the approved report. The deck shall not be brought into use until any works specified in the approved report have been carried out. Any such works shall be retained as such thereafter.

- 4) The deck hereby permitted shall not be brought into use until the car parking spaces have been laid out in accordance with the details shown on approved plan Car Parking Plan Proposed 27605. The spaces shall thereafter be kept available at all times for the parking of vehicles.
- 5) The deck shall only be open for customers between the hours of 12.00 and 22.00 on any day.

Appeal B: APP/Z4718/Y/21/3285173

- 1) The works hereby permitted shall begin not later than 3 years from the date of this decision.