



Appeal Decision

Site Visit made on 12 October 2021

by Paul Martinson BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 May 2022

Appeal Ref: APP/E2001/W/21/3279131

67 Market Place, South Cave HU15 2AS

- 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 T Armstrong against the decision of East Riding of Yorkshire Council.
 - The application Ref 20/02445/PLF, dated 28 July 2020, was refused by notice dated 15 April 2021.
 - The development is described in the application form as 'erection of terraced decking area for outdoor sitting'.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal is predominantly retrospective in that the decking and associated structures are already in place. However, for the avoidance of any doubt, I have determined the appeal on the basis of the plans before me.
3. Whilst a number of objections suggest that the premises has being used as a drinking establishment, I have determined the appeal on the basis that the application was made, namely as a terraced decking area for outdoor sitting to serve a restaurant. Any issues with the premises being used for purposes other than a restaurant are outside the remit of this appeal.

Main Issues

4. The main issues are:
 - the effect of the development on the character and appearance of the area including whether the development would preserve or enhance the character or appearance of the South Cave Conservation Area (the CA);
 - the effect of the development on the living conditions of the occupiers of neighbouring residential properties with particular regard to noise and disturbance; and
 - whether the location of the development is appropriate having regard to the development plan.

Reasons

Character and Appearance

5. The appeal site is located on Market Place, a reasonably busy road (A1034) within the village of South Cave. South Cave is defined as a Primary Village in the East Riding Local Plan Strategy Document (2016) (the ERLP). Commercial development, including two pubs, is prevalent here where it is interspersed with residential properties. Buildings tend to front the pavement, aside from a few exceptions, with long narrow gardens extending to the rear. Some development in gardens is present, including outbuildings, however this tends to be located closer to the rear of buildings with development becoming less common further into gardens. Gardens tend to get progressively more wooded away from Market Place.
6. The site and its surroundings lie within the CA. The South Cave Conservation Area Appraisal sets out that the significance of the CA derives from its multi-faceted character containing elements of a town as well as aspects of an estate village. This is broadly consistent with my observations on site, outlined above.
7. Consistent with the prevailing character, 67 Market Place occupies a long narrow plot with the building, in use as a restaurant, fronting the pavement. The decking area extends to the rear of the building, beyond a walled courtyard area and a store building. It occupies the full width of the plot and extends a considerable distance to the rear with the main seating areas located to the back of the site beyond a bar area. A tall timber fence extending to 2.4 metres high in places forms the boundary with the adjacent private gardens. A small gate leads into the remainder of the plot which I saw was predominantly grassed. Seating booths as well as bench seating are located adjacent to the boundary fence with sets of tables and chairs positioned through the centre. Festoon lighting attached to the fences extends over much of the decking.
8. I accept that the development has been carried out to a high standard. However, the significant area occupied by the decking combined with its tall fencing, bar, store and festoon lighting, as well as associated paraphernalia such as parasols contributes to a substantial and imposing structure when viewed from outside the site. Furthermore, it extends a noticeably greater distance back into the plot than is typical of development in the area. This represents an intrusion into an area occupied by residential gardens that is predominantly open and free from development, at odds with its character. The development is highly visible from numerous neighbouring properties and fleeting views are possible from the shared spaces around No 75 and No 79.
9. However, the development is well screened from Market Place and is not seen within the context of the historic development along the frontage of Market Place. Therefore, on the basis of what is before me, the proposal would preserve the character and appearance of the CA.
10. Nonetheless, having regard to my foregoing reasoning I conclude that the development has a moderately harmful effect on the character and appearance of the area, contrary to Policy ENV1 of the ERLP. This seeks to ensure new development is of a high quality design that is of an appropriate scale and has regard to the specific characteristics of the site's wider context and the character of the surrounding area. There would also be conflict with paragraph 130 of the National Planning Policy Framework (the Framework) which seeks to

ensure new development is visually attractive and is sympathetic to local character.

Living Conditions

11. The full length of the decked area runs along the boundaries to the side of No 73 and No 63 Market Place. The dwelling at No 73 is set back from the main line of buildings along Market Place and faces the side boundary of the appeal site at a reasonably short distance. Other dwellings, including No 71 and No 77 are a short distance from the appeal site.
12. On the site visit I saw that traffic noise from A634 was easily audible in the vicinity close to the rear of the appeal building, owing to its location in a mixed commercial/residential area, close to a reasonably busy road. However, my impression was that noise levels decreased further along the length of the plot, away from the road such that the background noise level here was lower and more typical of a residential area. Residents would reasonably expect these quieter areas to be protected.
13. Prior to the construction of the decking, outdoor dining took place in the aforementioned walled courtyard area which is positioned much closer to the rear of the appeal building. This dining space was limited to use between 0900 and 1900 hours by a planning condition and could accommodate approximately 20 covers. The area is predominantly set forward of No 73 and closer to the street frontage. It shares a boundary with No 71. The scale of the area limits the number of diners, and noise arising is, to an extent, likely limited by intervening outbuildings and walls. Nonetheless this is a location where background noise levels are likely to be higher being immediately to the rear of a mixed residential/commercial area that fronts a reasonably busy road. Thus this is an area that is less sensitive to change from increased noise levels than that occupied by the decking.
14. Conversely, whilst the building at No 67 is located within a mixed commercial area, the main seating areas within the decked area are set back a significant distance from the building extending into an area occupied by residential gardens where background noise levels are likely much lower. The decked area is most likely to be busy when the weather is favourable when local residents are likely to be using their gardens. In my view, the noise of up to 60 people dining in this area and being served from the bar would likely significantly exceed the noise levels that those local residents should reasonably expect in this location, particularly those at No 63 and No 73.
15. The appellant's noise assessment highlights the ambient noise level arising from the general murmur of conversation of customers (58dB) on the decking. This was interspersed by raised voices and laughter accounting for the maximum noise levels measured (72dB). Background noise levels, outside of dining times were also measured (44dB). In this regard, the PPG¹ guides that the subjective nature of noise means that there is not a simple relationship between noise levels and the impact on those affected. This will depend on how various factors combine in any particular situation. For non-continuous sources of noise, this is dependent upon the number of noise events, and the frequency and pattern of occurrence of the noise. The character of the sound is also a factor.

¹ Paragraph: 006 Reference ID: 30-006-20190722

16. No details of how often the maximum noise levels were achieved have been provided but in my experience such instances of laughter and raised voices are unlikely to be rare occurrences when customers are dining outside. Indeed, it is these individual loud events that are likely to have the greatest adverse effect on the enjoyment of the gardens of the neighbouring properties. Nonetheless, even the general murmur of conversation would not in reality be consistent at the ambient levels referred to as sound arising from conversation, like music, is inherently variable and intermittent.
17. Music was not being played on my site visit. There is also no mention of music during the noise assessment. However, it is clear from the appellant's final comments that this is still an expectation. In my experience, amplified music is rarely appropriate immediately adjacent to a residential area and is likely to lead to conversations being louder as customers talk over the music. Whilst the appellant has offered reduced volume levels of music, this only reinforces my view that the extent of the decking is inappropriate in this location. This is notwithstanding that a condition of the earlier planning permission precluded the use of amplified music in the courtyard area.
18. Notwithstanding the above, the noise assessment accepts that such effects would potentially be noticeable and disruptive and would represent a significant observed adverse effect level (SOAEL)². The noise assessment proposes several recommendations in an effort to mitigate these adverse noise levels. The hours of use are proposed to be reduced to between 0900 and 1900, which I accept would help to reduce the effect into the evening, however this would do little to reduce the effect on local residents' enjoyment of their gardens as they are most likely to be used during the day.
19. The noise assessment predicts that a thin rigid barrier would likely reduce the noise arising from the murmur of conversation to the level of background noise in the gardens beyond the barrier, although raised voices and laughter would still significantly exceed this by 15dB. The existing fence is not such a barrier due to its lightweight construction and the gaps between the panels. The noise assessment notes that in order to act as a barrier, any boundary screening should be imperforate and have a mass per unit area of 10 kg/m².
20. I do not have details of such a fence before me, and as such cannot assess its likely effectiveness. Moreover, it could be prejudicial to other parties to impose a condition in this regard, were I to consider allowing the appeal. Furthermore, given my above concerns with regard to the frequency of raised voices and laughter, and that this noise would exceed the background levels by 15dB even with the barrier, I am not convinced that the proposed fence would reduce the noise to levels that would be acceptable within the neighbouring gardens.
21. The noise assessment also proposes to limit the number of patrons using the decking at any one time. However, it is unclear what the limit may be so I can give this argument little weight. Furthermore, given that the highest noise levels recorded were when the decking was occupied by 42 people, I am not satisfied that the Council's suggestion of a maximum of 40 covers would provide sufficient mitigation.

² Noise Impact Assessment by Environmental Noise Solutions Limited, dated 7 July 2021.

22. Moreover, limiting the numbers would require constant management at busy times and would likely require the removal of tables from the decking. It is difficult to see how this could be managed effectively, or enforced.
23. With regard to disturbance from lighting, I am satisfied that the light levels could be limited to an acceptable level, were I to allow the appeal. This would be primarily through the suggested limitations on opening hours and reducing the need for lighting, whilst an acceptable lighting scheme that minimised light spill could be secured by an appropriately worded planning condition. In any case, a satisfactory lighting scheme would not overcome my concerns with regard to noise and disturbance.
24. Nonetheless even with reduced lighting I conclude that the decking and associated activity represents an unacceptable intrusion into residential garden space. Due to the intermittent nature of the noise arising from conversation and music with occasional laughter and raised voices, this is highly likely to result in residents experiencing SOAELs of noise.
25. Therefore, for the above reasons I conclude that the development has a significant adverse effect on the living conditions of the occupiers of neighbouring properties. The development therefore conflicts with Policy ENV1 (B.4) and Policy ENV6 (A) of the ERLP which, in summary, taken together, seek to safeguard the living conditions of occupiers of nearby properties. The development also conflicts with Framework paragraphs 130 and 185 which, in summary and amongst other things, seek to ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health and living conditions and avoid noise giving rise to significant adverse impacts on health and the quality of life.

Location

26. Policy S3 of the East Riding Local Plan supports new and/or enhanced local services and facilities in Primary Villages. Economic development appropriate to the scale of the village is also supported in these defined settlements. Notwithstanding that I have found the scale of the development to be harmful in this location, given its position to the rear of an existing restaurant, in a commercial area adjacent to a busy main road, the development is not of such a scale that it would appear unduly out of scale with South Cave, a sizeable village.
27. Nonetheless, Policy EC1 of the ERLP requires that new economic development is appropriate in scale to its location. Taking into account my above reasoning with regard to the excessive scale of the structure and the proximity of residential properties, as well as the effect on character and appearance, I conclude that the development is out of scale with its location, contrary to Policy EC1 and Framework paragraph 180, described above.

Other Matters

28. I have had regard to the presence of outdoor seating and a car park at the nearby pub, however this has not resulted in the presence of any raised structures. It also does not appear to be prominent from outside of the site. As such I am satisfied that this is not similar to the development before me.

Planning Balance and Conclusion

29. There are clear benefits to this development in terms of supporting a business that serves the local community and that has been adversely affected by the coronavirus pandemic. The business employs over 30 people, some of which have been hired since the construction of the decking, amounting to an economic benefit. I accept that the outdoor area was erected in good faith and was a response to the coronavirus regulations. However, I have found that the development has caused significant harm to the living conditions of local residents and has also resulted in moderate harm to the character and appearance of the area. This harm, taken together, outweighs the benefits.
30. Therefore, having considered the development plan as a whole, along with all other relevant material considerations, I conclude that the appeal should be dismissed.

Paul Martinson

INSPECTOR