



Appeal Decision

Site visit made on 8 March 2022

by Sarah Manchester BSc MSc PhD MEnvSc

an Inspector appointed by the Secretary of State

Decision date: 17th May 2022

Appeal Ref: APP/U2370/W/21/3280992

2 Breck Road, Poulton-le-Fylde, Lancashire, FY6 7AA

- 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 Danielle Mellor against the decision of Wyre Borough Council.
 - The application Ref 20/00495/FUL, dated 10 June 2020, was refused by notice dated 15 February 2021.
 - The development proposed is increase in height of perimeter brick wall and creation of covered area to seating (retrospective).
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for an award of costs has been made by Danielle Mellor against Wyre Borough Council. That application is the subject of a separate Decision.

Preliminary Matters

3. The appeal relates to an existing public house beer garden. The Council accepted amended plans (ref AK2/G External Areas Proposals) during the processing of the planning application, which removed a central pergola with retractable roof. At the time of my visit, the development appeared substantially complete and in accordance with the plans that were considered by the Council. Therefore, I have determined the appeal on the basis that planning permission is sought for the development that has been implemented.
4. The development is described in the application form as 'retrospective increase in height of perimeter brick wall and covered area to seating. Erection of pergola within external area'. However, as the pergola was subsequently removed from the scheme, I have adopted the description of the development from the decision notice in the banner heading above.

Main Issue

5. The main issue is the effect of the development on the living conditions of neighbouring residential occupiers on Prudy Hill and Breck Road, with particular regard to noise and disturbance.

Reasons

6. The appeal property is a public house known as The Cube. It is a substantial 3 storey building on the corner of Breck Road and Vicarage Road in the built up area of Poulton-le-Fylde Town Centre. Breck Road and Vicarage Road are

characterised by commercial premises in a range of uses including retail and late opening food and drink establishments. At least some of the commercial ground floor premises have residential accommodation above. The appeal site includes the public house and its external beer garden, which comprises a large area of hardstanding behind the building. The beer garden is in close proximity to the rears of flatted developments on Breck Road and to the gardens and rear elevations of terraced dwellings on Prudy Hill.

7. The development has increased the height of the beer garden boundary walls from 1.65m to roughly 2.25m. A polycarbonate roof projects inwards from the top of the walls by approximately 2m, below which there are covered and heated seating areas. There is further non-fixed seating in the central open area of the beer garden.
8. There is evidence, in the form of residential neighbour representations, that the development has resulted in an increase in noise during the evenings and the increased height of the wall does not offset the increased use of the beer garden. The Council's Environmental Health Officer (the EHO) confirms that there have been formal complaints in relation to the significant increase in noise following the completion of the development. The EHO visited several of the neighbours on a Saturday evening in August 2020, at which time he found the noise to be very noticeable, to the point that it would be irritating and it would require residents to raise their voices to communicate. Therefore, the development has the potential to be detrimental to neighbouring residential occupiers, with particular regard to noise and disturbance.
9. The submitted acoustic assessments¹ calculate the likely sound levels that would be experienced by the residential occupiers of the Prudy Hill dwellings. This is based on monitoring carried out on 2 occasions in July and September 2020 using a sound meter located on the eastern boundary on top of the projecting roof. The sound levels at the sensitive receptors, the gardens and rear elevations of Prudy Hill dwellings, were estimated based on assumptions about the barrier and distance attenuation that would be achieved. The acoustic reports conclude that internal and external sound levels at the Prudy Hill dwellings are acceptable and result in no observed effect.
10. There is little information in relation to the precise location or justification of the monitoring location. The barrier calculation assumes that the height of the source is 1.5m and there are 2 barriers at 2.25m and 1.8m height between the source and the receivers. However, the monitoring equipment appears to have been positioned above the height of the barriers and on top of the roof rather than located at 1.5m height at the source and behind the barriers. It is not clear why, since the development has already been carried out, the sound levels at the source and the receptors were not monitored. The monitoring appears to have been largely unattended and the noise environment is not characterised or described in detail. While the reports describe the rears of the Prudy Hill dwellings and their distance from the beer garden, there is little qualitative or quantitative information about the relationship of the beer garden to the Breck Road flats or the effect of the development on those occupiers.
11. Even accepting the acoustic assessment, as did the Council, it demonstrates only that the estimated continuous sound levels for the Prudy Hill dwellings would be acceptable. It does not demonstrate that the sound levels

¹ Martin Environmental Solutions, August 2020 and October 2020

experienced by occupiers of the Breck Road flats would be acceptable or that the maximum noise levels would not adversely impact the neighbouring occupiers on either or both Prudy Hill and Breck Road. In this regard, while the beer garden would not operate late into the night, it would operate during the evenings when neighbouring residents would be likely to be at home and when they could reasonably expect to enjoy both their homes and their gardens free from significant and regular noise disturbance.

12. The beer garden has been in use for a number of years and, irrespective of the likely noise levels, the acoustic assessment considers that the development results in a reduction in sound levels and an improvement over the previous arrangement. The reasons for this are primarily attributed to the additional barrier attenuation due to the increased wall height and the partial roof and a reduction in capacity. In this latter regard, the plans illustrate that the booth seating and the 5 free standing tables accommodate roughly 126 people. On the basis that the beer garden previously accommodated 250 people standing, the development would be a reduction in capacity. However, it is not clear that the assumptions of the acoustic assessment in terms of the baseline, or fallback, position are robust.
13. The submitted photograph of the beer garden prior to development illustrates an area of hardstanding partly overgrown by boundary vegetation, with a small number of tables and the storage of bins. There is little substantive evidence in relation to how it was used including in terms of frequency, intensity or duration over the course of a day, week or year. However, it is acknowledged that without a roof covering the external areas will only be usable when the weather allows. Therefore, I cannot be certain that the formerly open beer garden was used to capacity or on a frequent or regular basis through the year.
14. In terms of the current and future capacity, the evidence states that the seating is not part of the application and neither it nor parasols, marquees, heaters and booths require planning consent. There is little evidence that the booths seat a maximum of 4 people or that the area could not accommodate further seating, tables or standing. Therefore, future capacity could be greater than 126 persons seated.
15. Irrespective of capacity, the development provides an improved and more attractive outdoor space for customers. The covered and heated booths in particular are suitable for use for a greater proportion of the year than the previously open air arrangement. The enhanced beer garden would encourage customers to spend more time outside in the evenings and in more inclement weather than previously. The development would be likely to result in an intensification of use of the beer garden, including in terms of numbers of people and the frequency, regularity and duration of its use.
16. Furthermore, there appears to be some uncertainty in relation to the lawful use of the outdoor area and therefore the baseline for the assessment. Planning permission ref 07/00319/FUL was granted for ground floor extension to form staircase and change of use from car park to outside eating/ drinking area. Condition 2 of that permission restricts the use of the outside area (the beer garden) to between 0900 and 1800 and with no customers to be in the yard area at any other time. On the basis that the outside area has been used as a beer garden since that time, it seems reasonably likely that the permission has been implemented and therefore condition no 2 applies.

17. Notwithstanding the permitted hours of use, the beer garden has previously been used up until 2100. More recently it has apparently been used until 2200, in line with the current licensing hours. The Council accepts that its use until 2100 may now be lawful, but nevertheless there is no Lawful Development Certificate to establish that the use of the beer garden until either 2100 or 2200 is lawful for planning purposes.
18. Even if the beer garden would close to customers at 2100, rather than 2200 as appears to be suggested in the evidence with the appeal, it seems reasonably likely that its use would be markedly different from its previous use. While the increased height of the wall and roof would attenuate sound to a degree, there is little evidence this would effectively mitigate the likely increase in frequency, regularity and duration of use by large numbers of people. The magnitude of the noise change has not been robustly demonstrated nor that a reduction in noise levels would be achieved in practice.
19. The EHO had advised that the adverse maximum noise levels could be mitigated, and therefore the development could be made acceptable, through the imposition of planning conditions. These included that the pergola canopy was installed, that seating was permanently positioned in accordance with the submitted plans and specifying the noise levels that should not be exceeded at the neighbouring receptors. However, the Council considered that these would not pass the tests for conditions and I see no reason to disagree. No other measures appear to have been suggested to demonstrate that the harm could be mitigated through the imposition of conditions.
20. Therefore, I conclude that the development harms the living conditions of neighbouring residential occupiers, with particular regard to noise and disturbance. It conflicts with Policies SP2, CDMP1 and CDMP3 of Wyre Council Local Plan (2011-2031) Adopted February 2019. These require, among other things, that development promotes health and well being and that it avoids significant adverse effects on the amenity of occupants of surrounding properties, including by noise and nuisance. This is consistent with the National Planning Policy Framework, including in relation to promoting high standards of amenity, taking into account likely effects (including cumulative) of pollution on living conditions and mitigating and reducing to a minimum potential adverse impacts resulting from noise from new development.

Other Matters

21. The appeal property is in the Poulton-le-Fylde Conservation Area (the CA). Where proposals affect Conservation Areas, Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special attention be paid to the desirability of preserving or enhancing the character or appearance of that area. In this case, the development is not prominent in the CA and the Council considers that it would preserve the significance of the CA. I see no reason to disagree. This weighs neither for nor against the scheme.
22. National and local planning policies provide support for business and economic growth and the maintenance of the vitality of town centres. In this case, the evidence suggests that the development was at least in part a response to the Covid pandemic and the associated impacts on the hospitality industry. I accept that the enhanced outdoor area and covered seating would be a benefit to the business as it would facilitate the use of the outdoor area for the provision of food and drink irrespective of the weather. However, the economic benefits

have not been quantified nor has it been demonstrated that the business would not be viable if the appeal should fail. Therefore, this is a matter that carries limited weight in favour of the scheme.

23. I understand that there were no noise complaints for several years prior to the completion of the development and the EHO did not object to the recent extension of the licensed operating hours of the outside area. However, licensing and planning are separate regimes and they are subject to separate considerations. Statutory noise nuisance is dealt with by environmental protection legislation whereas planning has a broader duty to consider the living conditions of nearby residential occupiers, having regard to national and local planning policy. The level of noise and disturbance that may constitute harm for planning purposes is lower than the threshold for statutory nuisance. In the absence of substantive details and evidence to the contrary, the licensed hours of operation do not provide a justification for the development.

Conclusion

24. For the reasons set out above, I conclude that the development harms the living conditions of neighbouring residential occupiers, with particular regard to noise and disturbance. It conflicts with the development plan and there are no material considerations that would demonstrably outweigh that harm.
25. Therefore, the appeal should be dismissed.

Sarah Manchester

INSPECTOR