

Appeal Decision

Site visits made on 27 June 2022

by R Hitchcock BSc(Hons) DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 August 2022

Appeal Ref: APP/Q9495/W/22/3297944

The Chief Justice Of The Common Pleas, 2-6 Bank Street, Keswick, Cumbria CA12 5JY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by JD Wetherspoon PLC against the decision of Lake District National Park Authority.
 - The application Ref 7/2021/2348, dated 26 November 2021, was refused by notice dated 1 April 2022.
 - The application sought planning permission for the conversion of an existing car park to the north-east side of the existing public house to form an external customer and landscaped area without complying with a condition attached to planning permission Ref 7/2020/2228, dated 4 February 2021.
 - The condition in dispute is No5 which states that: Notwithstanding the opening times detailed within the application documentation the external customer area hereby permitted shall not be used by customers otherwise than between the hours of 09:00 and 18:00 on any day.
 - The reason given for the condition is: To safeguard the amenities of the occupants of neighbouring dwellings and businesses in proximity to the external customer area from noise during the evening and night when the area is quieter in accordance with paragraph 127 f of the National Planning Policy Framework.
-

Decision

1. The appeal is allowed and planning permission Ref.7/2021/2348, dated 26 November 2021, for the variation of Condition 5 on planning permission 7/2020/2228, dated 4 February 2021, is granted for the conversion of an existing car park to the north-east side of the existing public house to form an external customer and landscaped area at The Chief Justice Of The Common Pleas, 2-6 Bank Street, Keswick, Cumbria CA12 5JY, subject to the conditions set out in a Schedule at the end of this decision.

Preliminary Matters

2. The site lies within Keswick Conservation Area. There is no dispute between the main parties that the proposed development would not have an adverse effect on the character and appearance of the Conservation Area. Pursuant to the duty under s72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, having considered the proposal and visited the site I concur with that view. This is because the proposal relates only to the times of use of the existing approved development. Accordingly, it is my view that the development proposed would preserve the character and appearance of the designated area and I shall make no further reference to this matter.

Background and Main Issue

3. The appeal relates to an outdoor area associated with a public house which fronts on to Bank Street, a main route about Keswick town centre. The site benefits from planning permission for the outdoor eating and drinking area and associated landscaping. The area is subject to restricted use times between 0900-1800 on any day. The appellant wishes to extend those hours to 0900-2000 on all days and vary the terms of the permission accordingly.
4. The main issue is the effect on the living conditions of the occupiers of nearby residential properties and holiday accommodation, with particular regard to noise, disturbance and privacy.

Reasons

5. The main outside seating and landscaped area is located at the north-eastern end of the public house. It is bordered on 2 sides by Bank Street which bends about the northern sides of the site. A public car park is located to the rear of the pub. Also in the vicinity of the site are a number of residential flats and guesthouses.
6. The site is divided between the landscaped space to its north-western half and an enclosed seating area laid out with tables, chairs, pergolas and string lighting. The hard and soft landscaped area has restricted access save for a service delivery bay.
7. The site is located in an area of mixed development. On the opposite side of the road is a row of shops and businesses with residential flats above. To the north is a run of guesthouses set on a terrace. A block of residential flats at Heather Garth lies at the far end of the terraced row facing the mixed commercial/residential units. The locality is edge of centre and transitional to residential areas set behind the road-fronting development on Bank Street.
8. During the daytime, when most local businesses are active, I saw that the area has a considerable degree of activity. This arises from the traffic using a main route through the town, and visitors using the car park to access the adjacent town centre and the facilities about it, including the appeal site and other businesses on Bank Street. As businesses operating traditional opening times closed and traffic on the road reduced after the p.m. peak, activity in the area was observed to tail off.
9. However, despite more intermittency to the flow of traffic, a degree of background of activity remained. At the proposed closing time, the car park was still well used. Activity associated with the local evening economy continued, albeit at a reduced level compared to that associated with the traditional daytime working hours. I saw that some businesses on the row opposite the pub displayed opening hours into the evening and another outside drinking area was active to the south-eastern extent of the car park.
10. Despite the reduction in the level of activity, the edge of centre location and main route location had clearly distinctive characteristics from a residential estate setting. Accordingly, the level of background noise and activity that local residents might reasonably expect to experience would be higher than that of exclusively residential areas.

11. By its nature, the use of the site would cause noise to spill beyond its bounds. This would primarily be in conjunction with peoples' voices, which may have a propensity to increase in volume as the evening continues or when the site might be particularly busy. However, the proposed extension of hours is limited. It would not extend into a time of day when the majority of those occupying residential or holiday accommodation would anticipate night time levels of noise, nor would they generally be perceived as being unsociable hours.
12. Furthermore, much of the seating area is set below the elevated level of Bank Street and contained within a lockable enclosure consisting of a mix of railed fencing and stone walling. On the north-western boundary of the seating area, the internal line of fencing is supplemented by a glazed balustrade above the wall. Together these would offer some degree of noise containment and the ability for the site operator to control access to the area.
13. Although the noise generated by the site would be discernible from traffic noise, there is little to demonstrate that it would have an adverse effect on nearby occupiers during the early to mid-evening hours, or that it would be more persistent and less tolerable than traffic noise on the intervening road. A noise study submitted by the appellant indicating a limited effect is not contested by the Council.
14. I acknowledge that there might be concentrated levels of activity on certain occasions. However, the implementation of a proposed management regime to ensure behavioural expectations and the limitations of use hours are regulated, would offer the comfort that should noisy events arise, they would be addressed and would not be persistent.
15. Despite that such measures would be substantially reactive, given the latest time that patrons would be moved on from the area, such incidents would generally be very few and far between. Although a proportion of users would likely be tourists, over time, a consistent approach would be effective in ensuring individual instances of disturbance are minimised. Furthermore, the degree of containment of the area by the fencing, landscaping and the roadway, and the presence of lighting and CCTV cameras, would be unlikely to lead to a general feeling of intimidation to nearby occupiers or users of the public footways and car park bordering the site.
16. I acknowledge that my observations were only a snapshot in time and recognise that impacts could vary alongside seasonal changes. However, the site has been operating the outside space for some time. There is little evidence before me to demonstrate that this has resulted in complaints or incidents causing material losses of amenity to nearby residents or those occupying the guesthouses. In my view, the modest time extension of the use of the area would largely operate without adverse noise or disturbance impacts on nearby occupiers. This is a view shared by the Authority's environmental health advisors.
17. It is unclear from the Council's report as to where adverse effects on privacy might arise. The nearest houses and guesthouses lie above the level of the site and there are intervening public spaces. Although views to street-fronting windows are possible, the effect on occupiers within would be negligible due to the difference in levels. In the absence of demonstrated harm otherwise, I

consider that there would be no elevated impacts on the privacy of nearby residents.

18. For the above reasons, I find that, subject to the implementation of the premises management plan, the proposal would maintain high standards of living conditions for nearby residents and occupiers of local guesthouses. The variation to hours of use of the outdoor seating area would thereby comply with Policy 06 of the Lake District National Park Local Plan 2020-2035 and Paragraph 130 f) of the Framework as they require development to avoid unacceptable impacts on the amenity of adjoining residents / occupiers.

Other Matters

19. I note that the use of the site has been subject to a previous appeal¹. However, the terms of that proposal were different in area and times of operation. Accordingly, as I am required to do, I have considered this appeal in the light of the evidence before me and with regard to the development plan and the other relevant considerations presented.
20. I also note the concern that the outcome of this appeal could lead to proposals to extend the times of use further. If that were to occur, those proposals would similarly be considered on their own merits.

Conditions

21. The guidance in the PPG makes clear that decision notices for the grant of planning permission under s73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. Whilst I am aware that the development has been commenced there is no confirmation of its completion in accordance with the previously imposed requirements. Consequently, I have imposed all those conditions that I consider remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the main parties.
22. An additional condition requiring the implementation of the premises management plan for the outdoor area is necessary and reasonable to ensure proactive management of the area in the interest of protecting the amenity of those residing in the locality.
23. I have not, however, imposed the standard time limit as the development has been commenced. I have renumbered the conditions accordingly.

Conclusion

24. For the above reasons, I conclude that the appeal should be allowed.

R Hitchcock

INSPECTOR

¹ APP/Q9495/W/18/3211393

Schedule of Conditions:

1. The development hereby permitted shall not be carried out otherwise than in conformity with the following submitted plans and details:
 - Location Plan.
 - Proposed Site Plan - Drawing no. 02 Rev E.
 - Proposed Elevations - Drawing no. 04 Rev B.
2. Prior to their first use in the development hereby permitted details of the Granite Sets, Heritage Paving and finish of the timber canopy shall be submitted to the Local Planning Authority for approval. Thereafter the development shall be carried out in accordance with the approved details.
3. The additional landscaping and boundary treatment detailed on the site plan submitted as part of the application shall be undertaken within 12 months of the date of the first use of the development hereby permitted. All planting shall be maintained and any planting which, within a period of five years thereafter, die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar sizes and species unless the Local Planning Authority gives written consent to any variation.
4. The external customer area hereby permitted shall not be used by customers otherwise than between the hours of 09:00 and 20:00 on any day.
5. Prior to their installation the details and method of operation (including times of operation) of all external lighting fixtures (to land and buildings) shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be carried out and the lights operated in accordance with the approved details.
6. The external customer area hereby permitted shall not be used by customers until the following works have been undertaken and completed in accordance with the approved plans:
 - The new stone boundary wall;
 - The glass balustrade topping the stone boundary wall;
 - The lockable steel gates;
 - The painted black railings topping the stone boundary wall.
7. No amplified music, televised events, commentary or any other broadcast shall be shown or played within the external customer area hereby permitted.
8. The external area hereby approved shall be managed in accordance with the Chief Justice of the Common Pleas Premises Management Plan November 2021 at all times when open to patrons.

END.