



Appeal Decision

Site visit made on 26 July 2022

by David Cross BA(Hons) PgDip(Dist) TechIOA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 August 2022

Appeal Ref: APP/W3005/W/21/3289749

60 Portland Road, Selston, Nottingham, Nottinghamshire NG16 6AT

- 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 Mr K Quickfall against the decision of Ashfield District Council.
 - The application Ref V/2021/0400, dated 15 June 2021, was refused by notice dated 6 August 2021.
 - The application sought planning permission for change of use from post office, shop and off licence to post office, shop and café/micro pub without complying with conditions attached to planning permission Ref V/2018/0110, dated 26 April 2018.
 - The conditions in dispute are Nos 6 and 7 which state that:
 - 6. *No tables or seating shall be sited externally to the front, side or rear of the application premises.*
 - 7. *The patio door to the rear of the premises shall not be used by customers to access or egress the premises at any time, except in an emergency and the signage submitted on the additional plans received 18-04-2018 shall be installed on the side of the patio door, centrally located, with lettering to a minimum size of 10cm in height. The sign shall be maintained and retained in perpetuity for the life of the planning permission.*
 - The reasons given for the conditions are:
 - 6. *To safeguard the amenities of residents living in the vicinity of the application site.*
 - 7. *To safeguard the amenities of residents living in the vicinity of the application site.*
-

Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs was made by Mr K Quickfall against Ashfield District Council. This application is the subject of a separate Decision.

Preliminary Matter

3. It was requested that I view the appeal site from the neighbouring properties of 58 and 62 Portland Road and 7 School Road. I was able to do so at my site visit.

Main Issue

4. The main issue is whether the conditions are reasonable and necessary in the interests of the living conditions of nearby residents with regards to noise and disturbance.

Reasons

5. Planning permission was originally granted for a variety of uses at this site, although the main issue in this appeal stems from the use of the site as a micropub.
6. The site is located adjacent to Portland Road, which leads through the large village of Selston. The area is primarily residential, although there are other uses in the vicinity of the site including a skip hire/waste management business and a school.
7. The site has a close-knit relationship with adjacent dwellings. This includes an amenity area to the rear which bounds Nos 58, 62 and 7, as well as an open area to the front located in close proximity to Nos 58, 62 and dwellings on the opposite side of the road. The effect of the disputed conditions is to prevent the use of these areas for customers. The appellant seeks to remove these conditions to allow seating to be placed in parts of these outdoor areas for customers of the micropub.
8. Due to the proximity between the appeal site and nearby dwellings, neighbouring residents would be aware of noise generated by customers of the micropub using these external areas. There is a significant possibility that the level of noise and disturbance would be greater than that which nearby residents could reasonably expect. This would affect the external amenity areas of nearby dwellings as well as habitable rooms, with potentially significant adverse effects on the quality of life of residents. This is reflected in the comments from the Environmental Health consultee and the objections raised by residents in the area.
9. To address the matter of noise, the appellant has submitted a Noise Impact assessment (NIA) in support of the planning application. The NIA refers to the criteria of Table 4 of BS8233¹, and concludes that the internal noise levels of nearby residential properties would be well below the criteria in respect of living rooms or daytime resting within bedrooms. BS8233 states that this applies to external noise as it affects the internal acoustic environment from sources without a specific character, previously termed "anonymous noise". Occupants are usually more tolerant of noise without a specific character than, for example, that from neighbours which can trigger complex emotional reactions. For simplicity, only noise without character is considered in Table 4.
10. However, the noise generated by customers would have a specific character. It would be irregular enough to attract attention, and I am also mindful that the noise from customers which could reasonably be expected from a micropub seating area, such as voices and laughter, would be particularly distracting to nearby residents. On that basis, I do not consider that the criteria of Table 4 of BS8233 are an appropriate basis for assessing the proposal.

¹ BS8233:2014 "Guidance on sound insulation and noise reduction for buildings"

11. The NIA also includes a 10dB attenuation resulting from a heavy close boarded boundary fence acting as a noise barrier. However, a number of the windows of neighbouring properties are at first floor level and would be elevated above the height of the fence, which would significantly reduce its effect as a noise barrier.
12. I have had regard to the background noise levels and the calculation of noise from the seating area identified in the NIA. However, given the different characteristics of the sounds referred to, I am not persuaded that noise from customers using the seating areas would be largely masked by traffic or other environmental noise sources.
13. The appeal proposal would also increase the capacity of the micropub. This would lead to an increase in the comings and goings of customers, particularly late at night and at weekends, with a commensurate increase in noise and disturbance in this primarily residential area.
14. Drawing the above together, the NIA is not suitably robust in terms of the criteria used, or with regards to the modelling of the noise environment and the effectiveness of potential mitigation measures. I am mindful that the NIA is based on a worst case scenario of the number of customers, but this is not sufficient to outweigh my fundamental concerns in respect of the robustness of the assessment. Although the concerns of the Council and objectors are set out in more subjective terms, based on what I have observed and read those concerns are well-founded.
15. I have considered whether the issue of noise and disturbance could be addressed by further conditions as referred to by the appellant. This could include measures in relation to the hours of use of the seating areas, the number of customers, a noise barrier, signage, and controlling the form and deployment of seating. However, given the relationship of the appeal site to nearby residential properties and the nature of the noise generated by the proposal, I do not consider that it would be possible to use planning conditions to effectively mitigate harm arising from noise and disturbance.
16. The appellant refers to a skip hire/waste management business located in close proximity to neighbouring dwellings. This business was in operation at the time of my visit, and noise from the transfer of skips and vehicle movements was readily apparent. The evidence suggests that the operating hours of this business is unrestricted and that it could therefore operate at unsociable hours. However, there is no evidence that this business currently operates consistently on that basis, or that it is likely to do so in the future. This does not therefore negate the sensitive nature of nearby residential properties. In any event, it would not be appropriate to introduce further noise generating activities, such as those arising from the appeal proposal, which would add unacceptably to disturbance created by existing uses.
17. The appellant emphasises the economic benefits arising from the expansion of the micropub business, particularly following the pandemic, and that local and national planning policy supports business development. Furthermore, the micropub has social benefits as an important service within this village, which is evidenced by the comments made in support of the proposal. However, these matters would not outweigh the significant weight I give to protecting the living conditions of nearby residents.

18. I conclude that the disputed conditions are reasonable and necessary to protect the living conditions of nearby residents in respect of noise and disturbance. The appeal proposal would therefore conflict with policy ST1 of the Ashfield Local Plan Review 2002 with regards to environmental quality and amenity, as well as ensuring that development does not conflict with an adjoining or nearby land use. The proposal would also conflict with the National Planning Policy Framework which seeks to ensure a high standard of amenity for existing and future users of places and avoid noise giving rise to significant adverse impacts on the quality of life.
19. For the reasons given above, I conclude that the appeal should be dismissed.

David Cross

INSPECTOR