

# Appeal Decision

Site visit made on 26 July 2022

**by C McDonagh BA (Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 5 September 2022**

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## **Appeal Ref: APP/G2713/W/22/3292366**

### **Zoo Bar, 219a High Street, Northallerton DL7 8LW**

- 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 Mrs Deba Crow Clark against the decision of Hambleton District Council.
  - The application Ref 21/02100/FUL, dated 10 August 2021, was refused by notice dated 15 December 2021.
  - The development proposed is described as 'Retrospective Planning for the erection of a steel frame to the rear yard of the public house to create a new roof first floor terrace with 1.8m privacy screening for neighbouring properties. The proposals also include the erection of solid screening to the existing palisade fencing to all boundaries on the ground floor.'
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## **Decision**

1. The appeal is dismissed.

## **Preliminary Matters**

2. Subsequent to the refusal of the planning application, the Hambleton Local Plan (LP) was adopted in February 2022 and now replaces the aforementioned documents as the development plan. The Council has provided copies of the most relevant policies. Given the submission of the appeal post-dates the adoption of the LP, I am satisfied that the appellant has had a suitable opportunity to comment on the implications of the relevant policies.

## **Main Issues**

3. The main issues are as follows:
  - The effect of the development on the living conditions of occupiers of nearby dwellings with particular regard to noise and privacy; and
  - Whether the development site is at an unacceptable risk from flooding.

## **Reasons**

### *Living Conditions*

4. The appeal site comprises a two-storey building operating as a bar with a terraced area to the rear at ground floor level. At the time of my site visit, the steel framed structure intended to facilitate a terrace at first floor level was in place, although the floor itself was not installed and a canopy covered the ground floor ceiling.

5. The dwellings of Applegarth Terrace are located across a narrow alley to the west in close proximity to the rear terrace of the bar. The addition of a first-floor terrace has the potential to harm the living conditions of occupiers of these dwellings through conversational noise, laughter or raised voices and would be particularly noticeable during evening and night-time hours when background noise levels are generally lower.
6. Regardless of whether or not a request was made for an assessment during the planning application process, I have nothing before me at this time to identify noise levels that may occur as a result of the development and how this would be managed and mitigated to ensure the living conditions of local residents are not harmed. I understand that in living in close proximity to a bar, residents could reasonably expect a certain level of noise. Evidently the bar has existed in one form or another for some time. However, the addition of a first-floor terrace has the potential to significantly worsen noise impacts by increasing the number of customers in a small area. Although there are vague references to managing noise, there is nothing substantive before me to demonstrate that this could be achieved satisfactorily.
7. Although the addition of solid panelling to close off the gaps of the palisade fence would help to contain some of the noise generated by users of the terrace at ground floor level, the addition of a first floor has the potential to significantly worsen the situation for occupiers of dwellings along Applegarth Terrace. As such, I share the concern of the Council that this would be detrimental to the living conditions of occupiers of adjacent dwellings.
8. The dwellings of Applegarth Terrace include small yard areas that adjoin the alleyway which runs to the rear of the appeal site. The proposed first-floor terrace would project to the rear as far as the ground floor area and would be enclosed by an obscured glazed screen to a height of 1.8 metres. Given the height of the screening proposed, I am satisfied that overlooking would not occur to the yards of Applegarth Terrace. Moreover, on the site visit I observed that the view from the top of the external staircase did not overlook the yard of the nearest dwelling due to its set back.
9. Notwithstanding the lack of harm from overlooking, the development is contrary to Policy E2 of the LP which states proposals are required to ensure there are no significant adverse impacts in terms of noise (particularly with regards to noise sensitive uses and noise designations), including internal and external levels, timing, duration and character.

#### *Flood Risk*

10. The appeal site is located in Flood Zone 2. Paragraph 167 of the National Planning Policy Framework (the Framework) advises that when determining any planning applications, local planning authorities should ensure that flood risk is not increased elsewhere. Where appropriate, applications should be supported by a site-specific flood-risk assessment. Footnote 55 states clearly that a site-specific flood risk assessment should be provided for all development in Flood Zones 2 and 3.
11. I have had regard to the appellant's comments which question the need for a flood risk assessment. However, in light of the Framework guidance on flood risk, and a lack of assessment identifying the risks and mitigation measures,

there is no evidence to demonstrate that the proposal would be acceptable given the risk of flooding to the site.

12. To conclude on this main issue, there is insufficient evidence to demonstrate that the development would be suitably resistant to flooding. This would be contrary to Policy RM2 of the LP, which requires flood risk to be considered for all development commensurate with the scale and impact of the proposed development and mitigated where appropriate. As detailed above, the development would also be contrary to advice in the Framework.

### **Other Matters**

13. I understand that the appellant has invested significantly in the bar, including with facilities and security. In light of the economic recovery from the pandemic, I understand the desire to improve the offering to customers in order to compete with other businesses in the area. However, while these would weigh in favour of the scheme, I must balance this against the harm I have identified. As such, while the benefits to the appellant and their business are acknowledged, they do not outweigh the harm in this instance.
14. I note the appellant's concerns over the Council's handling of the application. However, this does not alter my findings above, to which I have had regard to the planning merits of the proposals and any material consideration as presented to me.
15. I have considered the measures suggested by the appellant, including installing security gates and lighting in the alley, to alleviate anti-social behaviour and a willingness to confirm opening hours. However, I have no substantive details on these before me. Moreover, it is unclear how these would alleviate concerns regarding the main issues as identified in the foregoing sections of this report. As such they attract little weight in favour of the scheme.

### **Conclusion**

16. The proposal has the potential to significantly harm the living conditions of adjacent residents with regard to noise and there is insufficient evidence to determine impacts from this and flooding in an area identified as being at risk. As such it would conflict with the development plan taken as a whole. There are no material considerations that indicate the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, I conclude that the appeal should be dismissed.

*C McDonagh*

INSPECTOR