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# Appeal Decision

Site visit made on 6 September 2022

**by Ian Radcliffe BSc(Hons) MRTPI MCIEH DMS**

an Inspector appointed by the Secretary of State

Decision date: 28<sup>th</sup> September 2022

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**Appeal Ref: APP/M1005/W/22/3294516**

**Railway Tavern Microbar Limited, 188 Station Road, Langley Mill NG16 4AE**

- 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 P Bassnett of Railway Tavern Microbar Limited against the decision of Amber Valley Borough Council.
  - The application Ref AVA/2021/0595, dated 18 May 2021, was refused by notice dated 4 March 2022.
  - The application sought planning permission to convert the existing public house and first floor of building to form 5 self-contained apartments and a ground floor micro-bar. Erect a self-contained two apartment building within the curtilage without complying with a condition attached to planning permission Ref AVA/2018/0963, dated 6 December 2018.
  - The condition in dispute is No 11 which states that: No live electrically amplified sound, including music and voices, shall be permitted at the micro-bar.
  - The reason given for the condition is: To protect the amenity of the residents of adjacent properties in accordance with policy H12 of the Adopted Amber Valley Borough Local Plan 2006.
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## Decision

1. The appeal is dismissed.

## Main Issue

2. In accordance with the granted permission, The Railway Tavern public house has been converted to create a micro-bar on the ground floor and 5 self-contained apartments.
3. In March 2020 condition 10, which controls opening hours, and condition 11, which relates to live electrically amplified sound and is the subject of the appeal, were removed on a temporary basis until the end of that year. The reason for the temporary permission in relation condition 11 was to allow noise levels and complaints to be monitored before deciding, if a further application was made, whether to permanently remove this condition.
4. In 2020 permission was also granted for a beer garden and a car parking area. Conditions were attached to this permission restricting hours of use and preventing amplified sound in the beer garden. In January 2022 permission was granted to increase the opening hours of the public house past midnight into Christmas Day and New Year's Day.
5. The appellant wishes to delete condition 11 which prevents the playing of live electrically amplified sound, including music and voices, in the micro-bar.

6. The concern of the Council is that live amplified music would harm the living conditions of neighbouring residents. Amenity is more usefully described as living conditions. The main issue in this appeal therefore is whether it is reasonable and necessary to prevent the playing of live electrically amplified sound in order to protect the living conditions of neighbouring residents from noise and disturbance.

## Reasons

7. The Railway Tavern is a detached building that occupies the corner of Station Road and Elnor Street. The micro-bar is located on the ground floor with the public area of the bar located towards the front of the building. Flats are located on the floor above. When live music has taken place it has occurred in the bar area towards the Elnor Street side of the public house. Terraced houses face the building on Station Road and are present on the same side of the road as the microbar on the adjacent street corner to the east. Terraced houses are also located to its rear along Elnor Street.
8. Policy H12 of the Amber Valley Borough Local Plan (Local Plan), which is referred to in the reason for condition 11, requires that development does not unduly affect the amenities of neighbours.
9. The temporary period during which condition 11 was suspended coincided with COVID-19 pandemic lockdowns and restrictions on public premises. This would have affected the performance of live amplified music at the public house. As a result, it would have limited the usefulness of the temporary permission in finding out whether such music resulted in noise complaints. However, the evidence of nearby residents is that music from the premises can already be clearly heard and is intrusive. Given that the micro-bar has a front door that opens out onto Station Road and openable windows it is therefore reasonable to find that live indoor amplified music at the premises increases noise levels experienced by nearby residents to the detriment of their living conditions.
10. I note that there are other potential sources of late night noise in the area. However, given the proximity of residents to The Railway Tavern it is highly unlikely that noise from within the building would be confused with another premises. It is stated that other businesses in Langley Mill such as 'The Bunny Hop' have fewer restrictions on entertainment. I note though that 'The Bunny Hop' is located in a mainly commercial part of Langley Mill with very few dwellings nearby. As a result, live amplified music there has far less potential to generate noise and disturbance that would harm the living conditions of residents. It is therefore not directly comparable to the appeal premises. As a result, reference to it has not altered my assessment of the proposal.
11. To protect living conditions, a condition of the public house permission was that the development was carried out in accordance with submitted separating wall and floor details. Since the conversion of the building the sound insulation between the flats in the building has passed Building Regulation tests. Such insulation protects the occupiers of the flats from reasonable levels of noise from other parts of the building which include other flats, common areas and the micro-bar on the ground floor. Nevertheless, loud enough levels of noise, such as could readily occur if live amplified music was played, would render such insulation ineffective.

12. Flat proprietors have not complained of loud music. I attach little weight though to this consideration in favour of deleting condition 11. This is because one of the functions of the planning system is to secure good living conditions for existing and future occupants of buildings and allowing amplified live music would undermine this objective.
13. Retention of the condition preventing live amplified music and voices reduces the scope for events that boost takings at the public house and help it to survive. However, I agree with the Council that the wording of the condition would still allow live unamplified acoustic music and the playing of recorded music, the loudness of which is more easily controlled. Even if this was not the case, the economic effects of the condition in reducing income do not outweigh the harm that would be caused to living conditions if live amplified music was allowed to occur.
14. For all of the above reasons, I therefore conclude that in order to comply with policy H12 of the Local Plan it is both reasonable and necessary to prevent the playing of live electrically amplified sound so that the living conditions of nearby residents are protected from noise and disturbance. Condition 11 therefore should be retained and not deleted. Accordingly the appeal should be dismissed.

### **Conclusion**

15. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

*Ian Radcliffe*

Inspector