



Appeal Decision

Site visit made on 12 December 2022

by Robert Parker BSc (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 December 2022

Appeal Ref: APP/L1765/W/22/3293207

132 Stockbridge Road, Winchester SO22 6RN

- 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 Jeremy Whaley of Blueberri Ltd against the decision of Winchester City Council.
 - The application Ref 21/02960/FUL, dated 17 November 2021, was refused by undated notice published on 11 February 2022.
 - The application sought planning permission for temporary use of garden area for restaurant dining space without complying with conditions attached to planning permission Ref 20/01701/FUL, dated 12 November 2020.
 - The conditions in dispute are Nos 1 and 2 which state that: (1) The permission hereby granted shall be for a limited period expiring on 30th June 2021 on or before which date the use of the garden space for restaurant use shall cease and the land restored to its former condition; and (2) The use hereby permitted shall only open to customers within the following times 1100-2100.
 - The reasons given for the conditions are: (1) The development is of a type not considered suitable for permanent retention due to the potential harmful impacts on the neighbouring amenities; and (2) To protect the amenities of the occupiers of nearby properties.
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Decision

1. The appeal is dismissed.

Background

2. Planning permission was granted on 12 November 2020 under reference 20/01701/FUL for the temporary use of the garden area as restaurant dining space for a temporary period expiring on 30 June 2021. This period was extended for a further 6 months under permission reference 21/01402/FUL. The time limited permission lapsed on 30 December 2021. The application before me seeks to remove the time restriction condition on the first planning permission but it is effectively seeking a permanent permission for the use of the garden for outdoor dining. I have dealt with the appeal on that basis.
3. The application also references condition no 2 in respect of the permitted hours during which the garden may be open to customers. However, the submitted operational noise management plan indicates that the appellant is not seeking any change to these hours. I have proceeded on the basis that the external dining area would be closed by 9pm.

Main Issue

4. The main issue is the effect of the proposal on the living conditions of nearby residents, with regard to noise and disturbance.

Reasons

5. This particular stretch of Stockbridge Road has a mixed residential commercial character, but the majority of shops and businesses lie on the south side of the road. The appeal premises is situated on the north side, embedded within a row of houses, most of them terraced. Residents of these properties experience traffic noise from what is a relatively busy road. However, the gardens to the rear are important in providing a quiet space for rest and relaxation.
6. The outdoor dining area for the restaurant is flanked by these gardens. Fencing along the boundaries provides privacy for adjoining residents. However, the proximity of the dining space is such that the sound of voices and laughter will carry into surrounding gardens. There will always be occasions, even within a wholly residential setting, where one's neighbours will be audible. However, a commercial dining area for up to 30 patrons is likely to generate far more noise and disturbance from lively conversations and general comings and goings.
7. The lack of complaints to the Council would suggest that the dining area has been managed well up until now. The appellant argues that this would continue in the event of a permanent permission being granted. The operational noise management plan, which has been in place since the first permission, provides some protection for neighbours. However, its effectiveness would depend on the extent to which the appellant, and future operators of the premises, enforce its provisions. Even then, the unpredictability of customer behaviour makes it difficult to mitigate the adverse impacts. The objection from the occupier of 134 Stockbridge Road demonstrates that the existing management regime, with its controls in place, is not sufficient to prevent annoyance and distress.
8. The grant of temporary permission was a proportionate response to Covid-19 and the social distancing restrictions which came with it. I have no doubt that the Council's decisions will have supported the business during that difficult period. Neighbours will have understood the reasons for creating an outdoor dining area at the rear of the premises and been prepared to endure some disruption. However, I am not persuaded that the current situation should be made permanent. The outdoor dining area would, over the longer term, have an adverse effect on the quiet enjoyment of surrounding gardens and this would be materially harmful to the living conditions of the neighbours.
9. I therefore conclude that the proposal results in conflict with Policy CP13 of the Winchester District Local Plan Part 1: Joint Core Strategy (2013) and Policies DM17, DM19 and DM20 of the Winchester District Local Plan Part 2: Development Management and Site Allocations (2017). Amongst other things, these policies seek to ensure that proposals do not have an unacceptable adverse impact on adjoining land, uses or property or cause unacceptable levels of noise and other pollution to neighbours, such that it would have an unacceptable impact on their health or quality of life.

Other Matters

10. The Council's refusal reason makes reference to the impact of lighting on neighbours. I saw some lighting hung on the fence around the perimeter of the garden, but this is no different to the sort of decorative garden lighting one might find in a domestic setting. The main adverse impacts on neighbours would be from noise and disturbance as discussed above.

Conclusion

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

Robert Parker

INSPECTOR