



Appeal Decision

Site visit made on 18 October 2022

by F Wilkinson BSc (Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 December 2022

Appeal Ref: APP/P4415/W/22/3296798

77B Blyth Road, Maltby, Rotherham S66 7LF

- 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 Mr G Davis of Cafe@Revs N Relics Ltd against the decision of Rotherham Metropolitan Borough Council.
 - The application Ref RB2021/2149, dated 17 November 2021, was refused by notice dated 24 February 2022.
 - The development is a single storey rear extension to existing cafe / retail premises with additional area of new raised decking adjacent.
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Decision

1. The appeal is allowed and planning permission is granted for a single storey rear extension to existing cafe / retail premises with additional area of new raised decking adjacent at 77B Blyth Road, Maltby, Rotherham, S66 7LF in accordance with the terms of the application, Ref RB2021/2149, dated 17 November 2021, subject to the conditions in the attached schedule.

Preliminary Matters

2. The single storey rear extension and raised decking have been constructed and are in use as seating areas for the café. The appellant submitted an amended plan with the appeal which shows a very small additional area of raised decking to the rear (west elevation) of the extension. During my site visit, I observed that the decking has been constructed in accordance with this amended plan. The appellant states that this change has been made to reduce the height of the decking to below 0.3 metres and that it is therefore permitted development and should not form part of the application.
3. From the evidence before me, the extension and decking, other than the very small additional area, were carried out as a single operation, with access to the decking area being gained from the extension. In my view, the decking forms part of the overall act of development. Furthermore, I have not been provided with a certificate of lawful development under sections 191 or 192 of the Town and Country Planning Act 1990 (the Act) to confirm that the decking is permitted under the terms of the GPDO¹.
4. It is not for me within the context of an appeal under section 78 of the Act to determine whether or not a development is lawful. It is open to the appellant to apply for a determination under the provisions of sections 191/192 of the Act. I have therefore considered the appeal on the basis of the development as applied for and the plans on which the Council based its decision. My

¹ Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

determination of this appeal does not affect the issuing of a determination pursuant to sections 191/192 of the Act.

Main Issues

5. The main issues are:

- the effect of the development on the living conditions of neighbouring residents with regard to noise and disturbance; and
- whether the development is in an appropriate location with regard to the development strategy for the area.

Reasons

Living Conditions

6. The surrounding area is predominantly residential. There are two houses to the rear. Houses sit across Blyth Road from the site. I noted during my late morning site visit that Blyth Road (the A634) has a fairly constant flow of traffic comprising a range of vehicle types including cars, buses and HGVs. The garage adjacent to the site adds to the background noise and activity through the processes taking place and associated equipment and general comings and goings. Activity associated with the café is therefore in the context of this background noise environment. I observed a small number of motorcycles arriving at the site, which also generated audible noise.
7. The original building is not large. The appellant's evidence states that the rear extension provides seating for up to 14 people and the external decking area for a further 14. The development has introduced a more intensive level of use, with the potential to result in greater levels of noise and disturbance.
8. It is evident from submissions made by the Council and local residents that there have been incidents of noise and disturbance giving rise to justified complaint. A notice under section 80 of the Environmental Protection Act 1990 (the Notice) relating to statutory nuisance was served by the Council following a rally held at the site in March 2022 that generated a large number of visitors and associated vehicles. This Notice appears to remain in place. The Council is concerned that a statutory nuisance will arise again when the property is not being actively investigated.
9. It is clear that the previous management of the business has given rise to noise and disturbance that has harmed the living conditions of nearby residents. However, I note the mitigation measures that the appellant identifies as having been put in place. This includes changes to the operational arrangements so that their organised rallies that could generate large numbers of people gathering, such as the one which necessitated the serving of the Notice, no longer take place at the site. The later Monday evening rallies, as detailed in the opening hours on the application form, are also identified as no longer being held. Furthermore, the opening hours have been reduced by 30 minutes on Mondays to Fridays compared to that stated on the application form. The resulting opening hours are 09:30 to 17:00 Monday to Friday and 10:00 to 16:00 on Saturday. The café does not therefore open into the evening when the environment may be quieter with less activity and local residents would have a greater expectation of peace and quiet.

10. Notwithstanding the implementation of the mitigation measures, the Council's evidence states that the EHO continues to receive complaints. However, only limited information is before me about these. There is no clear evidence as to whether they were found to be justified complaints. Furthermore, while the Council states that residents believe there are times when there have been breaches of the Notice, there is no evidence before me to indicate that there has been a confirmed breach since it was served.
11. An interested party has submitted details of complaints to the Council dated January and October 2022. This includes photographs showing what appears to be a fairly large number of people at the site.
12. The appellant indicates that a number of these photographs show the March 2022 rally. The appellant states that the other photograph was an occasion where an organised group of motoring enthusiasts used the garage forecourt to park vehicles during their visit to the café. This triggered a complaint to the Council's EHO, but I have no evidence to indicate that it was subsequently investigated by them, although it was raised with the appellant by the Council's planning team.
13. I am mindful that the rear extension and raised decking area provides additional capacity away from the front of the site, and in the case of the decking area mainly behind a timber clad palisade fence which the plans show as being around two metres in height. It therefore offers the opportunity of reducing the number of customers on the site frontage. This could be supported by a condition that limits seating in the hardstanding area to the front which is identified on the submitted plans as a parking area.
14. On the basis of the evidence before me, it does appear that the mitigation measures put in place by the appellant have sought to address the sources of the noise and disturbance that gave rise to justified complaints. Restrictions on the hours of operation can be secured through a condition and those suggested by the appellant are not unreasonable and would ensure that the café does not open in the evening and night time periods.
15. Noise and disturbance from a café need not necessarily be unacceptable in this location. I appreciate the concerns of the Council and nearby residents about the effects on living conditions, including health and wellbeing, given the history of use at the site. Nevertheless, the evidence before me in terms of the use of the premises for organised large gatherings is not persuasive. While the Council indicates that they are still taking place, no clear evidence has been provided to support this assertion, or that unacceptable noise and disturbance to local residents is being caused, such as details of justified complaints to its enforcement or environmental health teams.
16. As noted above, conditions could control the hours of operation and more tightly define the parking area and area for customers at the site frontage. With these measures and factoring in the separation distances to the nearest residential properties, I do not find that the development would give rise to unacceptable levels of noise and disturbance to the residents of surrounding properties. With these controls, residents would have satisfactory levels of peace and quiet at times of the day when they would reasonably expect levels of activity in the immediate environment to reduce.

17. I did consider whether a trial run of the development would be needed, through granting a temporary planning permission. However, in my judgment I do not consider this to be necessary, as with the conditions imposed, there is no reasonable basis to indicate that the development would cause unacceptable harm to the living conditions of nearby residents with regard to noise and disturbance.
18. Based on the evidence and my site visit observations, with the aforementioned controls in place, I conclude that the development would not lead to undue harm to the living conditions of neighbouring residents with regard to noise and disturbance. Accordingly, it would not conflict with the residential amenity aims of Policy CS27 of the 2014 adopted Rotherham Local Plan Core Strategy 2013 – 2028 and Policies SP11 and SP52 of the Rotherham Local Plan Sites and Policies, adopted 2018 (the SP). Although the Council has not identified specific elements of the National Planning Policy Framework or the Planning Practice Guidance in its first reason for refusal on its decision notice, there would also be no conflict with their residential amenity objectives and those relating to achieving healthy and safe communities.

Appropriate Location

19. The site is within a residential area as defined in Policy SP11 of the SP. This policy seeks to retain such areas primarily for residential uses. Non-residential uses will normally only be permitted where they are ancillary and complementary to the residential nature and function of the area; are no larger than is required to meet the needs of local residents; will not have an unacceptable impact on the residential amenity of the area; and demonstrate how they will be of benefit to the health and well-being of the local population.
20. Although cafés are not specifically referred to in the supporting text of the policy as a use that may serve the local community, the list is not exhaustive, and it is not a closed list. Furthermore, public houses are named in the supporting text. The character of the development would not be significantly different to a public house in terms of being ancillary and complementary to the main residential use and meeting the needs of local residents. I have addressed the effects on residential amenity above. There would be some health and wellbeing benefits of the development, in particular the opportunities for social interaction, which is identified as a benefit by many of the interested parties. Although the development has increased the number of covers for the café, it is of a scale commensurate with the character of the locality.
21. I therefore conclude that the development is in an appropriate location with regard to the development strategy for the area. It therefore accords with the requirements of Policy SP11 of the SP, which are summarised above.

Other Matters

22. To the rear, the outdoor seating area is bounded by a timber panel fence which the submitted plans show as around 1.8 metres high. There is a further palisade fence between the application site and the dwellings to the rear which is covered by extensive vegetation. This, together with the separation distance, mean that opportunities for overlooking these properties are limited.

23. As a café use where the majority of meals would be prepared for consumption on the site, the extent of any food wrappings carried away by customers is unlikely to be significant. I observed that the area of the site was in a tidy condition with no obvious signs of litter associated with the use.
24. Blyth Road in the vicinity of the site does not appear to be subject to any parking restrictions. During my site visit, which I appreciate is just a snapshot in time, I observed some on-street parking on the opposite side of Blyth Road. However, while one of the vehicles was potentially associated with the café given its livery, it was not clear whether the other vehicles I observed were. I note that the Council's Transportation Unit has raised no objections to the development including on matters relating to parking, traffic generation or safety. In the absence of any substantive evidence to the contrary, I have no reason to conclude that the development causes an unacceptable impact on highway safety.
25. The fear of a potential adverse effect can be a material consideration if there is some reasonable evidential basis for that fear. However, no substantive evidence has been provided to demonstrate that the development is causing an unacceptable level of anti-social behaviour.

Conditions

26. The Council has not suggested any conditions to be imposed in the event that I allow the appeal. However, a condition to require the development to be carried out in accordance with the approved plans is necessary in the interests of certainty. In the interests of living conditions of nearby residents, conditions are necessary to control opening hours and to identify areas for outdoor seating and parking to the front of the premises. Given the concerns about noise and disturbance, a condition to limit music at the site is also necessary.
27. Conditions 3 and 4 are imposed to ensure that details of the use of the site frontage are submitted, approved and implemented so as to make the development acceptable in planning terms. There is a strict timetable for compliance because permission is being granted retrospectively, and it is not possible to use a negatively worded condition to secure the approval and implementation of the details of the use of the site frontage before the development takes place. The conditions will ensure that the development can be enforced against if the requirements are not met.

Conclusion

28. For the reasons given above, having considered the development plan as a whole along with all other relevant material considerations, I conclude that the appeal should succeed.

F Wilkinson

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan; existing site/building plan – (PL)01; existing elevations – (PL)02; proposed site/building plan – (PL)03; proposed elevations – (PL)04.
- 2) The use hereby permitted shall only take place between the following hours:
 - 09:30 to 17:00 Mondays to Fridays;
 - 10:00 to 16:00 on Saturdays; and
 - no time on Sundays or Bank holidays.
- 3) Unless within one month of the date of this decision a scheme for the outdoor seating area to be provided within the area identified as 'existing hard-standing area used for staff and customer parking' on plan (PL)03 is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within one month of the local planning authority's approval, the use of the single storey rear extension to existing cafe / retail premises with additional area of new raised decking adjacent shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented. The scheme shall include a defined area for the outdoor seating area and the number of tables and chairs to be provided.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be maintained, and any customers within the area identified as 'existing hard-standing area used for staff and customer parking' on plan (PL)03 shall only consume food or drink within the defined outdoor seating area.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 4) Unless within one month of the date of this decision a scheme for vehicle parking at the site, including a timetable for implementation, is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented in accordance with the approved timetable, the use of the single storey rear extension to existing cafe / retail premises with additional area of new raised decking adjacent shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 5) No amplified music shall be played in the building identified as 'retail/servery area' and 'café seating area (internal)' on plan (PL)03, and no amplified or other music shall be played in the outdoor seating areas at any time.