
Appeal Decision

Site visit made on 28 February 2023

by T J Burnham BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5th April 2023

Appeal Ref: APP/N4720/W/22/3305953

106-108 New Road Side, Horsforth, Leeds LS18 4QB

- 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 Arc Inspirations against the decision of Leeds City Council.
 - The application Ref 22/02778/FU, dated 14 April 2022, was refused by notice dated 14 June 2022.
 - The development proposed is application for the change of use of external car park area to an external seating area.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The evidence indicates that consent was previously granted by the Council in May 2021 (Council Ref 21/02085/FU) for temporary consent for the car park to be used for external seating including several seating areas and booths and an external bar.
3. At the time of my site visit the area was covered with a variety of tables and benches placed on top of the hardstanding areas adjacent to the existing decked area.
4. It does not appear that the situation at the site is reflective of the temporary consent and the evidence indicates that the scheme was not built out due to uncertainty around the time limited consent.
5. The proposals within this appeal include extensive areas of decking, fixed and other seating, booths, lighting, and an external bar server. For the avoidance of doubt, I have determined the proposal on the basis of the submitted plans.

Main Issues

6. The first main issue is the effect of the proposal on the living conditions of occupiers of residential properties to the rear of the site with regard to noise and disturbance. The second is whether there would be any unacceptable impact on highway safety, and in particular, whether demand for off street parking would result in conflict between pedestrians and other traffic and would impede the free and safe movement of traffic.

Reasons

Living conditions

7. The car park area is situated closely to the west of the main premises. Albeit separated by a back lane and their rear gardens, residential properties on Featherstone Terrace, particularly those within the short terrace from No.s 13-21 sit a short distance away from the car park area. There is nothing to indicate that the rear elevations on these properties do not contain some windows that serve habitable rooms.
8. The proposed plans indicate that the car park area would become rather a 'destination' outdoor area, given the variety of seating, provision of booths, heating and lighting along with the construction of decking. I have no doubt that this would make for an attractive and pleasant area to spend time during periods of fine weather in the summer and that it would likely be well used, by large numbers of people at the same time, especially towards the end of the week and at weekends.
9. However, the periods of the most intense use during the best summer weather would be likely to coincide with times when those living nearby on Featherstone Terrace would wish to have windows open, including those on the rear elevations, to assist in providing fresh air and ventilation.
10. I have been provided with various acoustic reports and statements¹ in support of the proposals. To inform these, sound levels from the seating area were measured over a 2-week period in July 2022.
11. However, my confidence in this data to fully justify the scheme is limited by various factors. Firstly, there is no clear evidence as to how busy the seating area was during the period of survey work. Secondly, it is likely that the survey was undertaken with the current or similar arrangement within the car park, which appeared from photos within the evidence to additionally incorporate a marquee. The plans show a more desirable and attractive seating area than that existing at the site.
12. In any event, regardless of the outcomes and conclusions of the assessments, it would only take a few excessively loud people or over excited groups who were shouting to visit over the course of the summer to cause significant disturbance to adjacent occupiers and significantly harm their living conditions. The chances of this happening would be high given the positioning and extent of the external seating area. It is not clear if such patrons or groups are, or can be, fully accounted for within the modelling or survey data.
13. I therefore consider that the proposal has the potential to cause significant harm to the living conditions of occupiers of residential properties to the rear of the site with regard to noise and disturbance.
14. The proposal would therefore conflict with saved Policy GP5 of the Leeds Unitary Development Plan Review (2006) which amongst other things states that proposals should seek to avoid loss of amenity.

¹ Acoustic Assessment of an external dining area 9th March 2022, Acoustic Assessment of an external dining area in support of a planning appeal 9th August 2022 & Technical Letter February 21st 2023 by ACA acoustics.

Highway safety

15. The proposal would result in the loss of 8 parking spaces for the business. A detailed parking survey of the area has been undertaken and is included within a Transport Note².
16. The survey found that local parking demand was around 60% in all areas surveyed. It also found that the area is not under severe parking stress. In the absence of any compelling evidence to indicate otherwise, these results do not indicate that the loss of parking from the site would be particularly problematic.
17. I am also mindful that many visiting the premises may walk, given the extensive surrounding residential areas. Further, the site is located on a busy transport corridor with bus services available from stops close to the appeal site. It is therefore likely that many, especially given the nature of the establishment and likely intake of alcohol, would not be driving to visit the site in any case.
18. It is indicated that servicing the site often involves using vehicles larger than those that would have been able to use the car park in any event and are able to utilise the bays directly across the road from the premises.
19. I do not therefore consider that there would be any unacceptable impact on highway safety with particular regard as to whether demand for off street parking would result in conflict between pedestrians and other traffic. Nor would the proposal be likely to impede the free and safe movement of traffic.
20. The Parking SPD³ and Transport Planning SPD⁴ appear to suggest that outside of Leeds Core and fringe, departures from expected levels of parking could be acceptable subject to the characteristics of the particular site and area.
21. The proposal would not conflict with Policy T2 of the Leeds Core Strategy (2019) which amongst other things requires that parking provision will be required in accordance with current guidelines.

Other Matters

22. I appreciate that a previous temporary approval was granted. However, a key consideration within this matter appeared to be rules in place around the time which severely curtailed the ability of restaurants and other businesses to operate on an indoor basis. There is no indication that such rules will return, and I afford this matter limited weight.
23. I note the suggestion of a condition to restrict the use of the external seating area up to 22:00 hours in the evening. However, it is likely that some residents may wish to retire earlier than this and such a condition would not resolve the harm I have identified. It would not be reasonable to impose a condition to attempt to manage the behaviour of patrons within the external seating area.
24. I am not convinced that the new bar, store, and booth areas proposed to be developed along the boundary wall will provide significant further acoustic screening.

² Transport Note, Banyan Bar and Restaurant November 2022 by EAS.

³ Parking Supplementary Planning Document Leeds Local Development Framework Development Plan Document January 2016.

⁴ Transport Supplementary Planning Document March 2022.

25. I also accept that there do not appear to have been formal complaints from local residents to date about the external seating. However, that existing is not what is proposed, there is likely to have been a degree of understanding during the height of the Covid-19 pandemic and occupiers of property can change quickly. I therefore afford this matter limited weight.
26. There is nothing compelling within the evidence to persuade me that the business would become unviable without this additional seating. I therefore afford this matter limited weight.

Planning Balance and Conclusion

27. I accept that the proposal would offer a destination that may attract more people to Horsforth Town Centre and would make a positive contribution in economic terms. However, such benefits are outweighed by the harm identified.
28. There is nothing to indicate that the decision should be made otherwise than in accordance with the development plan and I therefore conclude that the appeal should be dismissed.

T J Burnham

INSPECTOR